



## TENNESSEE ADMINISTRATIVE REGISTER



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**RILEY C. DARNELL**  
*Secretary of State*

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## PREFACE

**The Tennessee Administrative Register (T.A.R.)** is an official publication of the Tennessee Department of State. The T.A.R. is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The T.A.R. contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Commerce and Insurance, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

**Emergency Rules** are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the T.A.R. after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

**Proposed Rules** are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the T.A.R., the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the T.A.R. of the following month.

**Public Necessity Rules** are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the T.A.R. Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

**Wildlife Proclamations** contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the T.A.R., they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

**Back Issues** - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

**Copies of Rules from Back Issues** of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

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## **ANNOUNCEMENTS**

### **DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180**

#### **ANNOUNCEMENT OF FORMULA RATE OF INTEREST**

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 11.57%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Greg Gonzales

### **DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180**

#### **ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST**

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of May 2006 is 9.01 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 5.01 percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Greg Gonzales

# ANNOUNCEMENTS

## GOVERNMENT OPERATIONS COMMITTEES

### ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3072.

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-01	Mar 3, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Public Necessity Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid 1200-13-13-.01 Definitions 1200-13-13-.02 Eligibility</i>	George Woods TennCare 310 Great Circle Road Nashville TN 37243 615-507-6446	March 3, 2006 through August 15, 2006
03-02	Mar 3, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid 1200-13-13-.01 Definitions 1200-13-13-.02 Eligibility</i>	George Woods TennCare 310 Great Circle Road Nashville TN 37243 615-507-6446	May 17, 2006
03-04	Mar 7, 2006	<b>0400 Environment and Conservation</b> Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rule	Amendments	<i>Chapter 1200-3-18 Volatile Organic Compounds 1200-3-18-.01 Definitions</i>	Ms. Lacey Hardin Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0554	May 21, 2006
03-05	Mar 7, 2006	<b>0400 Environment and Conservation</b> Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rule	Amendments	<i>Chapter 1200-3-11 Hazardous Air Contaminants 1200-3-11-.01 General Provisions</i>	Ms. Lacey Hardin Air Pollution Control 9th Floor L & C Annex 401 Church Street Nashville, TN 37243-1531 (615) 532-0554	May 21, 2006
03-06	Mar 9, 2006	<b>1660 Wildlife Resources Agency</b>	Rulemaking Hearing Rule	Amendment	<i>Chapter 1660-2-6 Rules And Regulations Governing Uniform Waterway Marker System 1660-2-6-.01 Navigation Aids and Regulatory Markers</i>	Sheryl Holtam, TWRA P.O. Box 40747 Nashville, TN 37204 (615) 781-6606	May 23, 2006

# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-07	Mar 9, 2006	<b>0800 Labor and Workforce Development</b> Workers' Compensation	Rulemaking Hearing Rule	Repeal and New Rules	<i>Chapter 0800-2-5 Benefit Review Process Rules</i> 0800-2-5-.01 Definitions 0800-2-5-.02 Request for Assistance or Mediation 0800-2-5-.03 Requirements for Request for Assistance 0800-2-5-.04 Requirements for Requests for Benefit Review Conference 0800-2-5-.05 Documents to be Provided upon Request of Workers' Compensation Specialist 0800-2-5-.06 Discovery 0800-2-5-.07 Benefit Review Conferences 0800-2-5-.08 Approval of Settlement by the Commissioner or the Commissioner's Designee 0800-2-5-.09 Exhaustion of the Benefit Review Conference Process 0800-2-5-.10 Penalties	E. Blaine Sprouse Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	May 23, 2006
03-08	Mar 13, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Public Necessity Rules	Amendment	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	March 13, 2006 through Aug 25, 2006
03-09	Mar 13, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Public Necessity Rules	Amendment	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Road Nashville, TN 37243 (615) 507-6446	March 13, 2006 through Aug 25, 2006

# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-11	Mar 14, 2006	<b>1050 Osteopathic Examination</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1050-2 General Rules and Regulations Governing the Practice of Osteopathy</i></p> <p>1050-2-.03 Licensure Process 1050-2-.04 Training 1050-2-.05 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure 1050-2-.17 Telemedicine Licensure</p> <p><i>Chapter 1050-3 General Rules and Regulations Governing the Utilization of X-Ray Operators in Osteopathic Physicians' Offices</i></p> <p>1050-3-.04 Qualifications for Full and Limited Certification 1050-3-.05 Obtaining and Upgrading Full and Limited Certification 1050-3-.10 Supervision</p>	Robert J. Kraemer, Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-12	Mar 14, 2006	<b>1150 Occupational and Physical Therapy Examiners</b> Committee of Physical Therapy	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1150-1 General Rules Governing the Practice of Physical Therapy</i></p> <p>1150-1-.05 Procedures for Licensure 1150-1-.12 Continuing Competence</p>	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-13	Mar 14, 2006	<b>1150 Occupational and Physical Therapy Examiners</b> Committee of Physical Therapy	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1150-2 General Rules Governing the Practice of Occupational Therapy</i></p> <p>1150-2-.05 Procedures for Licensure</p>	Nicole Armstrong, Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-14	Mar 14, 2006	<b>1365 Social Worker Certification and Licensure</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1365-1 General Rules and Regulations</i></p> <p>1365-1-.05 Procedures for Certification and Licensure 1365-1-.10 Supervision</p>	Nicole Armstrong, Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006



# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-15	Mar 14, 2006	<b>1330 Respiratory Care</b>	Rulemaking Hearing Rules	Amendment	<i>Chapter 1330-1 General Rules Governing Respiratory Care Practitioners</i> 1330-1-.05 Qualifications and Procedures for Licensure	Nocole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-16	Mar 14, 2006	<b>1000 Nursing</b>	Rulemaking Hearing Rules	Amendments          New Rules	<i>Chapter 1000-1 Rules and Regulations of Registered Nurses</i> 1000-1-.01 Licensure by Examination 1000-1-.02 Licensure Without Examination: By Interstate Endorsement  <i>Chapter 1000-2 Rules and Regulations of Licensed Practical Nurses</i> 1000-2-.01 Licensure by Examination 1000-2-.02 Licensure Without Examination: By Interstate Endorsement  1000-2-.17 Free Health Clinic and Volunteer Practice Requirements 1000-1-.18 Free Health Clinic and Volunteer Practice Requirements	Richard Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-17	Mar 14, 2006	<b>1730 Veterinary Medical Examiners</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 1730-1 General Rules Governing Veterinarians</i> 1730-1-.05 Procedures for Licensure 1730-1-.06 Fees  <i>Chapter 1730-3 General Rules Governing Veterinary Medical Technicians</i> 1730-3-.05 Procedures for Licensure 1730-3-.06 Fees  <i>Chapter 1730-5 General Rules Governing Certified Animal Euthanasia Technicians</i> 1730-5-.04 Procedures for Certification 1730-5-.06 Fees	Nocole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-18	Mar 14, 2006	<b>0880 Medical Examiners</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0880-2</i> <i>General Rules and Regulations Governing the Practice of Medicine</i></p> <p>0880-2-.03 Licensure Process U.S. and Canada Medical School Graduates</p> <p>0880-2-.04 Licensure Process International Medical School Graduates</p> <p>0880-2-.05 Licensure of Out of State and International Applicants</p> <p>0880-2-.06 Training Licenses And Licensure Exemptions</p> <p>0880-2-.07 Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure</p> <p>0880-2-.16 Telemedicine Licensure</p> <p><i>Chapter 0880-4</i> <i>General Rules and Regulations Governing the Practice of Athletic Trainers</i></p> <p>0880-4-.05 Licensure Process</p> <p>0880-4-.09 Licensure Renewal and Reinstatement</p> <p>0880-4-.11 Retirement and Reactivation of License</p> <p><i>Chapter 0880-5</i> <i>General Rules and Regulations Governing the Utilization of X-Ray Operators in Physician's Offices</i></p> <p>0880-5-.04 Qualifications for Full and Limited Certification</p> <p>0880-5-.11 Bone Densitometry</p> <p><i>Chapter 0880-9</i> <i>General Rules and Regulations Governing Radiologist Assistants</i></p> <p>0880-9-.04 Procedures for Certification</p>	Robert J. Kraemer, Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006
03-19	Mar 14, 2006	<b>1200 Health</b> Tennessee Medical Laboratory Board Division of Health Related Boards	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1200-6-1</i> <i>General Rules Governing Medical Laboratory Personnel</i></p> <p>1200-6-1-.05 Procedures for Personnel Licensure</p> <p><i>Chapter 1200-6-3</i> <i>General Rules Governing Medical Laboratories</i></p> <p>1200-6-3-.01 Definitions</p>	Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 28, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-20	Mar 17, 2006	<b>0260 Chiropractic Examiners</b>	Rulemaking Hearing Rules	Amendments	Chapter 0260-2 General Rules Governing Chiropractic Examiners 0260-2-.05 Procedures for Licensure  Chapter 0260-3 General Rules Governing Chiropractic X-Ray Technologists 0260-3-.05 Procedures for Certification  Chapter 0260-5 General Rules Governing Chiropractic Therapy Assistants 0260-5-.05 Procedures for Certification	Robert J. Kraemer, Jr Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-21	Mar 17, 2006	<b>1180 Psychology</b>	Rulemaking Hearing Rules	Amendments	Chapter 1180-2 Rules Governing Psychologists 1180-2-.03, Procedures for Licensure 1180-2-.03, Procedures for Licensure 1180-2-.05, Temporary License 1180-2-.06, Provisional License  Chapter 1180-3 Rules Governing Psychological Examiners and Senior Psychological Examiners 1180-3-.03, Procedures for Licensure 1180-3-.05, Temporary License  Chapter 1180-4 Rules Governing Certified Psychological Assistants 1180-4-.03, Procedures for Certification	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-22	Mar 17, 2006	<b>0880 Medical Examiners Committee on Physician Assistants</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-3 General Rules and Regulations Governing the Practice of a Physician Assistant</i> 0880-3-.05 Procedures for Licensure  <i>Chapter 0880-10 General Rules and Regulations Governing the Practice of an Orthopedic Physician Assistant</i> 0880-10-.05 Procedures for Licensure	Robert J. Kraemer, Jr Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-23	Mar 17, 2006	<b>1045 Optometry</b>	Rulemaking Hearing Rules	Amendments	<i>Chapter 1045-2 General Rules Governing the Practice of Optometry</i> 1045-2-.02 Licensure Process	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006

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SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-24	Mar 17, 2006	<b>0460 Dentistry</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0460-2</i>  <i>Rules Governing the Practice of Dentistry</i>            0460-2-.01 Licensure Process – By Exam and By Criteria (Reciprocity)            0460-2-.02 Dual Degree Licensure Process            0460-2-.03 Limited and Educational Limited Licensure Process</p> <p><i>Chapter 0460-3</i>  <i>Rules Governing Practice of Dental Hygienists</i>            0460-3-.01 Licensure Process            0460-3-.02 Criteria Approval Licensure Process (Reciprocity)            0460-3-.03 Educational Licensure Process</p> <p><i>Chapter 0460-4</i>  <i>Rules Governing the Practice of Dental Assistants</i>            0460-4-.02 Registration Process</p>	Mary J. Presley Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-25	Mar 17, 2006	<b>0480 Dispensing Opticians</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0480-1</i>  <i>General Rules Governing Dispensing Opticians</i>            0480-1-.05 Procedures for Licensure</p>	Nicole L. Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-26	Mar 17, 2006	<b>0880 Medical Examiners</b> Advisory Committee for Acupuncture	Rulemaking Hearing Rules	<p>Amendments</p> <p>New Rule</p>	<p><i>Chapter 0880-12</i>  <i>General Rules and Regulations Governing the Practice of Acupuncturists</i>            0880-12-.04 Acupuncture Certification Process            0880-12-.05 ADS Certification Process            0880-12-.09 Certification Renewal            0880-12-.11 Retirement and Reactivation of Certificate</p> <p>0880-12-.12 Continuing Education</p>	Robert J. Kraemer, Jr Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006

# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-27	Mar 17, 2006	<b>0450 Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0450-1</i>  <i>General Rules Governing Professional Counselors</i>            0450-1-.05 Procedures for Licensure</p> <p><i>Chapter 0450-2</i>  <i>General Rules Governing Marital and Family Therapists</i>            0450-2-.05 Procedures for Licensure</p> <p><i>Chapter 0450-3</i>  <i>General Rules Governing Clinical Pastoral Therapists</i>            0450-3-.05 Procedures for Licensure</p>	Richard F. Russell Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-28	Mar 17, 2006	<b>0470 Dietitian / Nutritionist Examiners</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 0470 1</i>  <i>General Rules and Regulations</i>            0470-1-.05 Procedures for Licensure</p>	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-29	Mar 17, 2006	<b>1370 Communications Disorders and Sciences</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1370-1</i>  <i>Rules for Speech Pathology and Audiology</i>            1370-1-.05 Procedures for Licensure</p>	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-30	May 17, 2006	<b>1370 Communications Disorders and Sciences</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1370-2</i>  <i>General Rules Governing Hearing Instrument Specialists</i>            1370-2-.05 Procedures for Licensure</p>	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-31	May 17, 2006	<b>1020 Nursing Home Administrators</b>	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1020-1</i>  <i>General Rules Governing Nursing Home Administrators</i>            1020-1-.08 Procedures for Licensure</p>	Mary J. Presley Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006

# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-32	May 17, 2006	<b>1200 Health</b> Board of Alcohol and Drug Abuse Counselors	Rulemaking Hearing Rules	Amendment	<i>Chapter 1200-30-1</i> <i>Rules Governing Licensure of Alcohol and Drug Abuse Counselors</i> 1200-30-1-.05 Licensure Process	Nicole Armstrong Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	May 31, 2006
03-34	Mar 22, 2006	<b>1340 Safety</b> Driver License Issuance	Emergency Rules	Amendments	<i>Chapter 1340-1-13</i> <i>Classified and Commercial Drivers Licenses And Certificates for Driving</i> 1340-1-13-.02 Definitions 1340-1-13-.03 Driver License and Certificate For Driving Classifications 1340-1-13-.08 General Eligibility Standards 1340-1-13-.17 Expirations and Renewals	Wanda Adams Driver License Issuance Department of Safety 1150 Foster Avenue Nashville TN 37249-1000 615-251-5309	Mar 22, 2006 through Sept 3, 2006
03-35	Mar 22, 2006	0880 Medical Examiners	Rulemaking Hearing Rules		<i>Chapter 0880-2</i> <i>General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.09 Licensure Renewal and Reinstatement 0880-2-.10 Licensure Retirement/Inactivation and Reactivation 0880-2-.14 Specifically Regulated Areas and Aspects of Medical Practice 0880-2-.20 Medical Professional Corporations and medical Professional Limited Liability Companies  <i>Chapter 0880-5</i> <i>General Rules and Regulations Governing the Utilization of X-Ray Operators in Physician's Offices</i> 0880-5-.01 Scope of Practice 0880-5-.11 Bone Densitometry	Robert Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 2, 2006

## ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-36	Mar 24, 2006	0870 Massage Licensure Board	Rulemaking Hearing Rules	Amendments	<i>Chapter 0870-1</i> <i>General Rules Governing Licensed Massage Therapists and Establishments</i> 0870-1-.02 Practice Standards and Inspection of Establishments 0870-1-.04 Licensure and Provisional Licensure Process 0870-1-.05 Establishment Licensure Process 0870-1-.12 Continuing Education 0870-1-.17 Advertising	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 7, 2006
				New Rules	<i>Chapter 0870-2</i> <i>General Rules Governing Massage Therapy Educational Programs</i> 0870-2-.01 Definitions 0870-2-.02 Program Approval and Curriculum Requirements 0870-2-.03 Withdrawal of Program Approval 0870-2-.04 Program Admission Requirements 0870-2-.05 Minimum Standards for Directors Instructors and Classrooms 0870-2-.06 Program Policies and Procedures 0870-2-.07 Annual Report		

# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-39	Mar 29, 2006	<b>1220 Tennessee Regulatory Authority</b>	Rulemaking Hearing Rules	New Rules	<i>Chapter 1220-4-13 Wastewater Regulations</i> 1220-4-13-.01 Application and Purpose 1220-4-13-.02 Definitions 1220-4-13-.03 Retention of Records 1220-4-13-.04 Documents to be Filed with the Authority 1220-4-13-.05 Maps and Records 1220-4-13-.06 Adequacy of Facilities 1220-4-13-.07 Financial Security 1220-4-13-.08 Standard Forms for Filing Financial Security 1220-4-13-.09 Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security 1220-4-13-.10 Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment 1220-4-13-.11 Receiverships or Other Transfers of Operation or Ownership 1220-4-13-.12 Customer Relations 1220-4-13-.13 Customer Billing 1220-4-13-.14 Denying or Discontinuing Service 1220-4-13-.15 Reconnection	J. Richard Collier TRA 460 James Robertson Pkwy Nashville TN 37243 (615) 741-2904, ext 170	June 11, 2006
03-40	Mar 29, 2006	<b>0180 Financial Institutions Compliance Division</b>	Proposed Rules	Amendments	<i>Chapter 0180-34 Title Pledge Lenders – Recordkeeping and Business Practices</i> 0180-34-.01 Definitions. 0180-34-.02 Recordkeeping. 0180-34-.03 Grace Period—Default of Obligations 0180-34-.04 Sale of Repossessed Vehicles. 0180-34-.05 Fraud, Dishonesty or Misrepresentation – Business Practices 0180-34-.06 Severability.	Kevin C. Bartels Financial Institutions Nashville City Center 511 Union St 7th Fl Nashville TN 37243 615-741-0346	July 28, 2006



# ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
03-43	Mar 31, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.01 Definitions 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment 1200-13-13-.08 Providers 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-13-.13 Member Abuse and Overutilization of the TennCare Program	George Woods Bureau of TennCare 310 Great Circle Rd Nashville TN 37243 (615) 507-6446	June 14, 2006
03-44	Mar 31, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-13 TennCare Medicaid</i> 1200-13-13-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Rd Nashville TN 37243 (615) 507-6446	June 14, 2006
03-45	Mar 31, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.01 Definitions 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment, and Reassignment 1200-13-14-.05 Enrollee Cost Sharing 1200-13-14-.08 Providers 1200-13-14-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits 1200-13-14-.13 Member Abuse and Overutilization of the TennCare Program	George Woods Bureau of TennCare 310 Great Circle Rd Nashville TN 37243 (615) 507-6446	June 14, 2006
03-46	Mar 31, 2006	<b>0620 Finance and Administration</b> Bureau of TennCare	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-13-14 TennCare Standard</i> 1200-13-14-.04 Covered Services	George Woods Bureau of TennCare 310 Great Circle Rd Nashville TN 37243 (615) 507-6446	June 14, 2006
03-47	Mar 31, 2006	<b>1340 Department of Safety</b> Driver License Issuance	Proposed Rules	Amendments	<i>Chapter 1340-1-13 Classified and Commercial Drivers Licenses and Certificates for Driving</i> 1340-1-13-.02 Definitions 1340-1-13-.03 Driver License and Certificate For Driving Classifications 1340-1-13-.08 General Eligibility Standards 1340-1-13-.17 Expirations and Renewals	Wanda Adams Department of Safety Driver License Issuance 1150 Foster Ave Nashville TN 37249-1000 615-251-5309	July 28, 2006

## ANNOUNCEMENTS

### **TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720**

#### **NOTICE OF BEGINNING OF REVIEW CYCLE**

Visit the Tennessee Health Services and Development Agency web site at: <http://www.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

## **EMERGENCY RULES**

### **DEPARTMENT OF SAFETY – 1340 DIVISION OF DRIVER LICENSE ISSUANCE**

#### **CHAPTER 1340-1-13 CLASSIFIED AND COMMERCIAL DRIVERS LICENSES AND CERTIFICATES FOR DRIVING**

#### **STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES**

Pursuant to T.C.A. §4-5-208 I am promulgating emergency rules covering procedures for the issuance of certificates for driving. The emergency amendment to these rules are necessary because of the risk to the security of the State of Tennessee.

I have made a finding that there is an emergency creating a danger to the public welfare in that there have been recent instances of certificates for driving being illegally distributed without proper documentation or testing and sold in violation of the law. Absent an emergency rule to suspend this program, there would be the possibility of such instances occurring again, compromising the security of the citizenry of this state. Therefore, unless emergency rules ceasing the issuance of such certificates to undocumented persons are adopted there would be no safeguard against such issuance. The lack of such rules would be injurious to the security of the citizens of this State.

For copies of the entire text of the proposed amendments, contact: Jason Hunnicutt, Staff Attorney, Tennessee Department of Safety, 1150 Foster Avenue, 615-251-5277.

Gerald Nicely  
Interim Commissioner of Safety  
State of Tennessee

#### **AMENDMENTS**

Paragraph (3) of rule 1340-1-13-.02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (3) Certificate for Driving means a certificate issued to persons whose presence in the United States has been authorized by the federal government for a specific purpose and for a specific time and who meet identification and residency requirements required by the Department. Such certificate shall be clearly distinguishable from a driver license and shall clearly display on its face a phrase similar to "FOR DRIVING PURPOSES ONLY-NOT VALID FOR IDENTIFICATION".

**Authority:** T.C.A. §§4-5-208, 55-50-202, 55-50-331

## EMERGENCY RULES

Subparagraph (a) of paragraph (3) of rule 1340-1-13-.03 Driver License and Certificate For Driving Classifications is amended by deleting the current language in its entirety and submitting the following language so that as amended the subparagraph shall read:

- (a) Type T (Non-Commercial Certificate for Driving) Required for any person whose presence in the United States has been authorized by the federal government for a specific purpose and for a specified period of authorized stay who operates a single vehicle with a G.V.W.R. not in excess of twenty-six thousand (26,000) pounds, or a combination vehicle with a G.C.W.R. not in excess of twenty-six thousand (26,000) pounds, except Classes A, B, C, or M or vehicles which require a special endorsement unless the proper endorsement appears on the license.

**Authority:** T.C.A. §§4-5-208, 55-50-202, 55-50-331

Subparagraph (c) of paragraph (1) of rule 1340-1-13-.08 General Eligibility Standards is amended by deleting such subparagraph in its entirety.

**Authority:** T.C.A. §§4-5-208, 55-50-202, 55-50-331

Subparagraph (b) of paragraph (3) of Rule 1340-1-13-.17 Expirations and Renewals is amended by deleting such subparagraph in its entirety.

**Authority:** T.C.A. §§4-5-208, 55-50-202, 55-50-331

The emergency rules set out herein were properly filed in the Department of State on the 22nd day of March, 2006, and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the date of 3rd day of September, 2006. (03-34)

## **PROPOSED RULES**

### **DEPARTMENT OF FINANCIAL INSTITUTIONS - 1340 COMPLIANCE DIVISION**

#### **CHAPTER 0180-34 TITLE PLEDGE LENDERS – RECORDKEEPING AND BUSINESS PRACTICES**

Presented herein are proposed rules of the Department of Financial Institutions submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Financial Institutions to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Department of Financial Institutions, 511 Union Street, 4<sup>th</sup> Floor, Nashville City Center, Nashville, Tennessee 37219 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact Kevin C. Bartels, Legal Division, Department of Financial Institutions, 511 Union Street, 4<sup>th</sup> Floor, Nashville City Center, Nashville, Tennessee 37219, telephone number (615) 741-0346.

The text of the proposed rules is as follows:

### **NEW RULES**

#### **TABLE OF CONTENTS**

0180-34-.01	Definitions.
0180-34-.02	Recordkeeping.
0180-34-.03	Grace Period—Default of Obligations
0180-34-.04	Sale of Repossessed Vehicles.
0180-34-.05	Fraud, Dishonesty or Misrepresentation – Business Practices
0180-34-.06	Severability.

#### **0180-34-.01 DEFINITIONS.**

- (1) “Act” means the Tennessee Title Pledge Act, as amended, at Tenn. Code Ann. §§ 45-15-101 et seq.;
- (2) “Applicant” means a person who applies for a license or renewal of a license to act as a title pledge lender;
- (3) “Commissioner” means the Commissioner of the Department of Financial Institutions;

## PROPOSED RULES

- (4) "Department" means the Tennessee Department of Financial Institutions;
- (5) "Default" means failure of a pledgor to make payment of any principal, interest and/or fees due and owing pursuant to a title pledge agreement or a breach by a pledgor of any provision of a title pledge agreement;
- (6) "Grace Period" means a period not to exceed sixty (60) calendar days during which a pledgor has not made payment due under a title pledge agreement and where the title pledge lender has elected to permit the pledgor a specific number of additional days in which to make payment;
- (7) "Records" means any and all books, accounts, papers, records, files, software, information stored in electronic format, mail, email and other documents regardless of what format in which they are kept, that are used in the title pledge lender's business;
- (8) The definitions in this Chapter are intended to supplement and not conflict with those definitions contained in Tenn. Code Ann. § 45-15-103, as amended.

**Authority:** *T.C.A. §§ 45-1-107(h); 45-15-108 (a) – (d); and 45-15-113.*

### **0180-34-.02 RECORDKEEPING.**

- (1) Each title pledge lender shall keep and use in its business any records and other documentation, in written and/or electronic form, required by the Commissioner to carry into effect the provisions of the Act and this Chapter. Each title pledge lender shall preserve these records and other documentation for a period of at least twenty-four (24) months after making the last entry on any transaction and twenty-five (25) months for all rejected applications.
- (2) At a minimum, these books, accounts, records and other documentation shall include the following, in addition to the records required to be kept under the Act, whether kept in written or electronic form, provided that such records are readily accessible and printable upon request:
  - (a) A consecutively numbered record or log of each title pledge or property pledge agreement executed by the title pledge lender and pledgor, with that number being placed on the corresponding title pledge or property pledge agreement.
  - (b) The following information for each title pledge or property pledge agreement entered into by a title pledge lender, maintained on ledger card or computer system that can be printed upon request:
    - 1. Name, address, date of birth and physical description of the pledgor (for example, a copy of a current driver's license);
    - 2. Date and agreement number;
    - 3. Total amount of payments made by the pledgor, including the date of each payment;
    - 4. Fees and interest charged to the pledgor;
    - 5. Terms of repayment;

## PROPOSED RULES

6. Description of titled personal or pledged property, including the vehicle identification number (VIN), as applicable;
7. Maturity date;
8. Unpaid balance;
9. Copies of customer receipts which include amount and date of all payments;
10. Distribution of all payments to principal, fees and interest;
11. Copies of any agreement to purchase memberships in automobile clubs or associations, including the written notice to the pledgor that the membership is optional, can be purchased elsewhere, and that the purchase of the membership has no bearing on whether the pledgor receives a loan;
12. Records shall be maintained for each pledgor and shall include the title pledge or property pledge agreement and all other records pertaining thereto. All documents pertaining to a specific title pledge or property pledge agreement shall contain the title or property pledge number;
13. A checkbook register or cash register, in numerical order, indicating the distribution of funds under each title pledge or property pledge agreement and to whom such proceeds were disbursed;
14. A record indicating the total number of accounts and the dollar value of all title pledge or property pledge receivables shall be maintained and available on a monthly basis;
15. Any errors in records shall be recorded by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when and by whom such correcting entry was recorded;
16. Whenever an active loan is for any reason transferred to another licensed office in this state, the title pledge lender shall retain in the transferring office an exact copy of the individual account record and supporting legal documents;
17. Written proof of right of rescission until the close of the next business day provided to each customer;
18. Records of payments made to a customer's account that occur prior to the due date;
19. Copies of all renewal statements and past due notices required to be given to the pledgor pursuant to Tenn. Code Ann. § 45-15-113;
20. A log of each repossession of a pledgor's titled personal or pledged property, including the name, address, and account number of the pledgor and a description of the vehicle, including the VIN, as applicable; and,
21. Copies of disclosures of application of proceeds of sale of repossessed titled personal or pledged property made to customers, as provided in Rule 0180-34-.04(3) of this Chapter.

## PROPOSED RULES

- (3) This Rule shall not be construed to abrogate or otherwise limit the disclosures required to be kept by title pledge lenders pursuant to the federal Truth in Lending Act at 15 U.S.C. §§ 1601 et seq., Regulation Z 12 C.F.R. Part 226 et seq. or any regulation promulgated thereunder or any statute or regulation promulgated by the Commissioner requiring compliance with the Truth in Lending Act.
- (4) All title pledge lenders must comply with the Equal Credit Opportunity Act ("ECOA") at 15 U.S.C. §§ 1691 et seq., and shall provide the applicant with a written notice of the reason for declining to offer a title pledge or property pledge agreement. The notice may be provided to the applicant at the time the title pledge or property pledge agreement is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the files of the title pledge lender.
- (5) At the time the Truth In Lending disclosure, required pursuant to 15 U.S.C. §§ 1601 et seq., and Regulation Z 12 C.F.R. Part 226, is provided to the borrower by the title pledge lender, the title pledge lender must provide a statement that:
  - (a) Clearly describes under what circumstances the titled personal or pledged property may be repossessed and sold; and
  - (b) Informs the pledgor that if the titled personal or pledged property is sold, the pledgor may not receive any proceeds from the sale because of the costs incurred.
- (6) The recordkeeping provisions in this Chapter may be superceded, where applicable, by federal statutes, rules or regulations relating to title pledge lenders.

**Authority:** T.C.A. §§ 45-1-107(h); 45-15-106, 45-15-108 (a) – (d); and 45-15-110.

### **0180-34-.03 GRACE PERIOD—DEFAULT OF OBLIGATIONS.**

- (1) In the event a pledgor does not pay the required interest and fees due in the title or property pledge agreement and/or the required five percent (5%) of the original principal amount in full by the thirtieth day of the contract, then the due date of the contract may be extended for a grace period, provided that the title or property pledge agreement containing the grace period:
  - (a) Does not exceed, either directly or indirectly, the interest and fees permitted by Tenn. Code Ann. § 45-15-111(a);
  - (b) Is set out in the original title pledge agreement;
  - (c) Is set out in a written statement to the pledgor;
  - (d) Is retained by the title pledge lender in the pledgor's file;
  - (e) Does not provide for accrued interest or fees to be capitalized or added to the original principal of the title pledge agreement; and
  - (f) Provides that the failure of the customer to pay within the stated grace period shall constitute default of the title pledge agreement by the pledgor.



## PROPOSED RULES

- (2) Reduction in Principal: If the pledgor fails to pay the required interest and fees due in the title pledge agreement and/or the required five percent (5%) of the original principal reduction on the thirtieth day of the third renewal, the title pledge lender may allow the transaction to be continued by a grace period not to exceed sixty (60) days, provided the title pledge lender shall reduce the principal amount of the loan by five percent (5%) of the original principal amount each month solely for the purposes of calculating the interest and fees. In addition, the following shall apply to any reduction in principal made during a grace period:
- (a) The reduction in principal shall continue to be owed by the pledgor in accordance with the title pledge agreement, but that amount shall not be entitled to accrue interest or fees thereafter;
  - (b) If the pledgor fails to pay the required interest and fees due and/or the required five percent (5%) of the original principal amount at the end of any grace period, the title pledge lender shall declare the title pledge agreement in default;
  - (c) The title pledge lender is entitled to any interest and fees earned up to the declaration of default upon repossession and sale of the vehicle.

**Authority:** T.C.A. §§ 45-1-107(h); 45-15-108(a); 45-15-111; and 45-15-113.

### **0180-34-.04 SALE OF REPOSSESSED VEHICLES.**

- (1) Factors Considered in Determining Whether a Sale Is “Commercially Reasonable”: For purposes of determining compliance with the Act, the Commissioner may consider the following factors to determine if the elements of a sale described in this Rule have been met:
- (a) Whether the title pledge lender either sold the titled personal or pledged property in the usual manner in any recognized market therefor or if it sold at the price current in such a market at the time of sale;
    - 1. For purposes of determining whether a title pledge lender has sold a repossessed vehicle at the current market price, the Commissioner may reference the published reports of valuations published in any of the automotive industry trade journals.
  - (b) Whether the sale was made in keeping with prevailing trade practices among reputable and responsible business and commercial enterprises engaged in the same or a similar business;
  - (c) If the sale was to the general public, whether and to what extent advertising was conducted in order to increase competitive bidding and maximize proceeds or, if the sale was not made to the general public, the number of bids solicited, received, amounts bid and whether such bids were sealed;
    - 1. Bids, if submitted, must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.
  - (d) Whether an independent appraisal was made of the titled personal property;

## PROPOSED RULES

- (e) Whether the sale price of the titled personal or pledged property was reasonably related to its actual value, as determined by independent appraisal of the property;
  - (f) The condition of the collateral at the time of sale; and
  - (g) Any special circumstances involved in the sale.
- (2) Application of proceeds of sale: As part of a “commercially reasonable” sale conducted pursuant to Tenn. Code Ann. § 45-15-114(b) and as described in Title 47, Chapter 9, Part 6 of the Tennessee Code Annotated, a title pledge lender may defray certain expenses from the proceeds of a sale of titled personal or pledged property obtained pursuant to a title pledge agreement, as provided herein:
- (a) The reasonable, actual and documented expenses of preparing for disposition, processing, and disposing of the titled personal or pledged property;
  - (b) Documented improvements and/or repairs to the titled personal or pledged property completed that are reasonably calculated to increase the commercial value of the titled personal or pledged property;
  - (c) The title pledge lender shall deliver to the pledgor all proceeds of the sale exceeding the amount owed under the title pledge agreement and the reasonable, documented and actual costs associated with the repossession and sale and an accounting of the expenses, improvements and repairs made to the titled personal or pledged property. Delivery of the proceeds must be made not later than three (3) business days after the title pledge lender receives the proceeds of the sale. If the vehicle was paid for by a check, the title pledge lender may deliver the proceeds within three (3) days after the check has cleared.

**Authority:** *T.C.A. §§ 45-1-107(h); 45-15-108(a); 45-15-113; and 45-15-114.*

### **0180-34-.05 FRAUD, DISHONESTY OR MISREPRESENTATION – BUSINESS PRACTICES.**

No title pledge lender shall directly or indirectly, by act or omission, do or permit another to do any of the following acts or conduct to occur in the course of its business:

- (1) Make any title pledge or property agreement or conduct business as a title pledge lender at any place other than at the title pledge lender’s licensed location.
- (2) Alter or change any title in its possession, other than to record a lien or to release a lien thereon.
- (3) Calculate daily interest based upon any time period other than a three hundred sixty (360), three hundred sixty-five (365) or three hundred sixty-six (366) day year.
- (4) Fail to disclose any fact or condition which exists that, if it had existed at the time when the title pledge lender applied for its license, would have been grounds for denying such application.
- (5) Violate any provision of federal law, rules or regulations applicable to title pledge lenders or title pledge or property pledge agreements.

## PROPOSED RULES

- (6) Sell or provide an item, service, or commodity through any means that is incidental to the advance of funds pursuant to a title pledge or property pledge agreement when such item, service or commodity may confuse the customer as to the true nature of the title pledge or property pledge agreement.
- (7) Use any device or agreement, including agreements with affiliated title pledge lenders, with the intent to obtain greater charges than otherwise would be authorized by the Act, including, but not limited to, the following:
  - (a) a transaction with the customer in which funds in connection with a title or property pledge agreement are provided;
  - (b) a “signature loan” and/or sales/leaseback arrangement;
  - (c) catalog sales;
  - (d) sales of cards, stamps, vouchers, certificates, coupons or the like in connection with a title pledge transaction;
  - (e) “cash-back” advertising sales; or
  - (f) internet sales.
- (8) Use any scheme, method or artifice designed to disguise transactions regulated by the Act or to appear to be ‘loans’ made by a national or state bank chartered in another State in which title or property pledge agreements and/or transactions are unregulated.
- (9) Require a pledgor to enter into a title or property pledge agreement containing a:
  - (a) Hold harmless clause;
  - (b) Confession of judgment or other waiver of the right to notice and opportunity to be heard in the event of suit or process; or
  - (c) Provision in which the borrower agrees not to assert any claim or defense arising out of the contract against the title pledge lender.
- (10) Fail to pay in cash or by check to its customer the entire amount loaned.
- (11) Fail to pay in cash or by check on the same date the title of the titled personal property or pledged property is presented to the title pledge lender.

**Authority:** *T.C.A. §§ 45-1-107(h); 45-15-107(a); 45-15-108(a); and 45-15-115(a).*

### **0180-34-.06 SEVERABILITY.**

If any section, term or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other section, term or provision of this Chapter, and the remaining sections, terms and provisions shall be and remain in full force and effect.

## PROPOSED RULES

*Authority: T.C.A. §§ 45-1-107(h) and 45-15-108(b).*

The proposed rules set out herein were properly filed in the Department of State on the 29th day of March, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of June, 2006. (03-40)

## PROPOSED RULES

### DEPARTMENT OF SAFETY – 1340 DIVISION OF DRIVER LICENSE ISSUANCE

#### CHAPTER 1340-1-13 CLASSIFIED AND COMMERCIAL DRIVERS LICENSES AND CERTIFICATES FOR DRIVING

Presented herein are proposed amendments of the License Issuance Division, Department of Safety submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Safety to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the Department of Safety, 1150 Foster Avenue, Nashville, TN 37249, and in the Department of State, 8<sup>th</sup> Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For copies of the entire text of the proposed amendments, contact: Jason Hunnicutt, Staff Attorney, Tennessee Department of Safety, 1150 Foster Avenue, 615-251-5277.

The text of the proposed amendments is as follows:

#### AMENDMENTS

Paragraph (3) of rule 1340-1-13-.02 Definitions is amended by deleting the current language in its entirety and substituting the following language so that as amended the paragraph shall read:

- (3) Certificate for Driving means a certificate issued to persons whose presence in the United States has been authorized by the federal government for a specific purpose and for a specific time and who meet identification and residency requirements required by the Department in 1340-1-13-.12. Such certificate shall be clearly distinguishable from a driver license and shall clearly display on its face a phrase similar to “FOR DRIVING PURPOSES ONLY-NOT VALID FOR IDENTIFICATION”.

**Authority:** T.C.A. §§4-5-202, 55-50-202, 55-50-331

Subparagraph (a) of paragraph (3) of rule 1340-1-13-.03 Driver License and Certificate For Driving Classifications is amended by deleting the current language in its entirety and submitting the following language so that as amended the subparagraph shall read:

- (a) Type T (Non-Commercial Certificate for Driving). Required for any person whose presence in the United States has been authorized by the federal government for a specific purpose and for a specified period of authorized stay who operates a single vehicle with a G.V.W.R. not in excess of twenty-six thousand (26,000) pounds, or a combination vehicle with a G.C.W.R. not in excess of twenty-six thousand (26,000) pounds, except Classes A, B, C, or M or vehicles which require a special endorsement unless the proper endorsement appears on the license.

**Authority:** T.C.A. §§4-5-202, 55-50-202, 55-50-331

## PROPOSED RULES

Subparagraph (c) of paragraph (1) of rule 1340-1-13-.08 General Eligibility Standards is amended by deleting such subparagraph in its entirety.

**Authority:** *T.C.A. §§4-5-202, 55-50-202, 55-50-331*

Subparagraph (b) of paragraph (3) of Rule 1340-1-13-.17 Expirations and Renewals is amended by deleting such subparagraph in its entirety.

**Authority:** *T.C.A. §§4-5-202, 55-50-202, 55-50-331*

The proposed rules set out herein were properly filed in the Department of State on the 31st day of March, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of July, 2006. (03-48)

## **PUBLIC NECESSITY RULES**

### **PUBLIC NECESSITY RULES NOW IN EFFECT**

FOR TEXT OF PUBLIC NECESSITY RULE,  
SEE T.A.R. CITED, <http://www.state.tn.us/sos/pub/tar/index.htm>  
or  
[http://www.state.tn.us/sos/rules/necessity/nec\\_index.Htm](http://www.state.tn.us/sos/rules/necessity/nec_index.Htm)

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for the disenrollment of Medically Needy dual eligibles on or after January 1, 2006, chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 9, 2005; effective through May 23, 2006. (12-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-38)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-39)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Standard rules to reflect changes resulting from court orders and a state plan amendment, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-40)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-41)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for a Presumptive Eligibility process that will provide short term temporary and limited eligibility to persons who are likely to qualify for regular institutional Medicaid eligibility pursuant to DHS Rule 1240-3-3-.02(9) and provide them with home services that will keep them out of nursing homes at no financial risk to the person, chapter 1200-13-1 General Rules, 2 T.A.R. (February 2006) - Filed January 30, 2006; effective through July 14, 2006. (01-38)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules relating to the comprehensive medical fee schedule and related system, chapter 0800-2-17 Medical Cost Containment Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-21)

## PUBLIC NECESSITY RULES

- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules realting to the comprehensive medical fee schedule and related system, chapter 0800-2-18 Medical Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-22)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules realting to the comprehensive medical fee schedule and related system, chapter 0800-2-19 In-Patient Hospital Fee Schedule, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-23)
- 0800 - Department of Labor and Workforce Development - Division of Workers' Compensation - Public Necessity Rules realting to the comprehensive medical fee schedule and related system, chapter 0800-2-20 Medical Impairment Rating Registry Program, 12 T.A.R. (December 2005) - Filed November 16, 2005; effective April 30, 2006. (11-24)
- 1220 - Tennessee Regulatory Authority - Public Necessity Rules dealing with standards and procedures to implement certain financial security requirements regarding wastewater services by public utilities, Chapter 1220-4-13 Wastewater Regulations, 1 T.A.R. (Janaury 2006) - Filed December 29, 2006; effective through June 12, 2006. (12-36)



**PUBLIC NECESSITY RULES**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209.

Federal law (Title XIX of the Social Security Act) requires that the eligibility of persons enrolled in the Medicaid program be recertified on an annual basis. The attached amendments set forth provisions for recertifying the eligibility of persons currently enrolled in the TennCare program's Core Medicaid Population. In addition, the amendments provide a process for review before the eligibility of persons enrolled in the Core Medicaid Population may be terminated.

I have made a finding that the attached amendments are required by an agency of the federal government and adoption of the amendments through ordinary rulemaking procedures might jeopardize the loss of federal funds.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration

**PUBLIC NECESSITY RULES**

**OF**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION**

**BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

**AMENDMENTS**

A new paragraph (21) is added to rule 1200-13-13-.01 Definitions and subsequent paragraphs are re-numbered accordingly. New paragraph (21) shall read as follows:

- (21) CORE MEDICAID POPULATION shall mean individuals eligible under Title XIX of the Social Security Act, 42 U.S.C. §§ 1396, et seq., with the exception of the following groups: individuals receiving SSI benefits as determined by the Social Security Administration; individuals eligible under a Refugee status; individuals eligible for emergency services as an illegal or undocumented alien; individuals receiving interim Medicaid benefits with a pending Medicaid disability determi-

## PUBLIC NECESSITY RULES

nation; individuals with forty-five (45) days of presumptive or immediate eligibility; and children in DCS custody.

Subparagraph (a) of paragraph (6) of rule 1200-13-13-.02 Eligibility is deleted in its entirety and replaced with a new subparagraph (a) which shall read as follows:

- (a) An enrollee who qualifies for TennCare Medicaid through the TDHS shall recertify his/her TennCare Medicaid eligibility as required by the appropriate category of medical assistance as described in Chapter 1240-3-3 of the rules of the TDHS - Division of Medical Assistance. Prior to termination of Medicaid eligibility for enrollees of the Core Medicaid Population, enrollees' eligibility will be reviewed in accordance with the following process:

- 1. Request for Information.

- (i) At least thirty (30) days prior to the expiration of their current eligibility period, the Bureau of TennCare will send a Request for Information to all Core Medicaid enrollees. The Request for Information will include a form to be completed with information needed to determine eligibility for open Medicaid categories.
- (ii) Enrollees will be given thirty (30) days inclusive of mail time from the date of the Request for Information to return the completed form to TDHS and to provide TDHS with the necessary verifications to determine eligibility for open Medicaid categories.
- (iii) Enrollees with a health, mental health, learning problem or a disability will be given the opportunity to request assistance in responding to the Request for Information. Enrollees with Limited English Proficiency will have the opportunity to request translation assistance for responding to the Request for Information.
- (iv) If an enrollee provides some but not all of the necessary information to TDHS to determine his/her eligibility for open Medicaid categories during the thirty (30) day period following the Request for Information, TDHS will send the enrollee a Verification Request. The Verification Request will provide the enrollee with ten (10) days inclusive of mail time to submit any missing information as identified in the Verification Request.
- (v) Enrollees who respond to the Request for Information within the thirty (30) day period shall retain their eligibility for TennCare Medicaid (subject to any changes in covered services generally applicable to enrollees in their Medicaid category) while TDHS reviews their eligibility for open Medicaid categories.
- (vi) TDHS shall review all information and verifications provided within the requisite time period by an enrollee pursuant to the Request for Information and/or the Verification Request to determine whether the enrollee is eligible for any open Medicaid categories. If TDHS determines that the enrollee remains eligible for his/her current Medicaid category, the enrollee will remain enrolled in such Medicaid category. If TDHS makes a determination that the enrollee is eligible for a different open Medicaid category, TDHS will so notify the enrollee and the enrollee will be enrolled in the appropriate TennCare Medicaid category. When the enrollee is enrolled in the new appropriate TennCare Medicaid category, his/her eligibility in the previous category shall be terminated without additional notice.

## PUBLIC NECESSITY RULES

If a child is reviewed for Medicaid eligibility and is found not to be eligible for any open Medicaid category, the child will be reviewed for eligibility for TennCare Standard under Rule 1200-13-14-.02(3). If TDHS makes a determination that the enrollee is not eligible for any open Medicaid categories or if an enrollee does not respond to the Request for Information within the requisite thirty (30) day time period the TennCare Bureau will send the enrollee a twenty (20) day advance Termination Notice.

- (vii) Enrollees who respond to the Request for Information or the Verification Request after the requisite time period specified in those notices but before the date of termination shall retain their eligibility for TennCare Medicaid (subject to any changes in covered services generally applicable to enrollees in their Medicaid category) while TDHS reviews their eligibility for open Medicaid categories. If TDHS determines that the enrollee remains eligible for his/her current Medicaid category, the enrollee will remain enrolled in such Medicaid category. If TDHS makes a determination that the enrollee is eligible for a different open Medicaid category, TDHS will so notify the enrollee and the enrollee will be enrolled in the new appropriate TennCare Medicaid category. When the enrollee is enrolled in the appropriate TennCare Medicaid category, his/her eligibility in the previous category shall be terminated without additional notice. If a child is reviewed for Medicaid eligibility and is found not to be eligible for any open Medicaid category, the child will be reviewed for eligibility for TennCare Standard under Rule 1200-13-14-.02(3). If TDHS makes a determination that the enrollee is not eligible for any open Medicaid categories, the TennCare Bureau will send the enrollee a twenty (20) day advance Termination Notice.
- (viii) Individuals may provide the information and verifications specified in the Request for Information after termination of eligibility. TDHS shall review all such information pursuant to the rules, policies and procedures of TDHS and the Bureau of TennCare applicable to new applicants for TennCare Medicaid coverage. The individual shall not be entitled to be reinstated into TennCare Medicaid pending this review. If the individual is subsequently determined to be eligible for an open Medicaid category, s/he shall be granted retroactive coverage to the date of application, or in the case of spend down eligibility for Medically Needy pregnant women and children, to the latter of (a) the date of his or her application, or (b) the date spend down eligibility is met.

### 2. Termination Notice

- (i) The TennCare Bureau will send Termination Notices to all Core Medicaid Population enrollees being terminated pursuant to state and federal law who are not determined to be eligible for open Medicaid categories pursuant to the Request for Information processes described in Rule 1200-13-13-.02(6)(a)1.
- (ii) Termination Notices will be sent twenty (20) days in advance of the date upon which the coverage will be terminated.
- (iii) Termination Notices will provide enrollees with forty (40) days from the date of the notice to appeal the termination and will inform enrollees how they may request a hearing. Appeals will be processed by TDHS in accordance with Rule 1200-13-13-.12.

## PUBLIC NECESSITY RULES

- (iv) Enrollees with a health, mental health, learning problem or a disability will be given the opportunity to request additional assistance for their appeal. Enrollees with Limited English Proficiency will have the opportunity to request translation assistance for their appeal.

**Authority:** T.C.A. §§4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 3rd day of March, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 15th day of August, 2006. (03-01)

**PUBLIC NECESSITY RULES**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

This rule is being amended to delete language that was inadvertently left in when a public necessity rule was promulgated pointing out that effective January 1, 2006 persons who are determined to be Severely and/or Persistently Mentally Ill are subject to lifetime limitations.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration

**PUBLIC NECESSITY RULES**

**OF**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION**

**BUREAU OF TENNCARE**

**CHAPTER 1200-13-13  
TENNCARE MEDICAID**

**AMENDMENT**

Paragraph (4) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (4) which shall read as follows:

- (4) Maximum Lifetime Limitations.

The following maximum lifetime limitations shall apply to the services outlined in paragraphs (1) and (2) above. The managed care organizations shall not impose service limitations that are more

## PUBLIC NECESSITY RULES

restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care organization's discretion. Determination of these limitations shall be based upon the managed care organization's payments for those services and shall exclude payments made by the enrollee in the form of deductibles, copayments, and/or special fees. Children under age 21 are exempt from limitations on substance abuse services.

Detoxification	Ten (10) days per lifetime
Substance abuse benefits (Inpatient and outpatient)	\$30,000

**Authority:** T.C.A. 4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 13th day of March, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 25th day of August, 2006. (03-08)

**PUBLIC NECESSITY RULES**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620  
BUREAU OF TENNCARE**

**CHAPTER 1200-13-14  
TENNCARE STANDARD**

**STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES**

I am herewith submitting amendments to the rules of the Tennessee Department of Finance and Administration, Bureau of TennCare, for promulgation pursuant to the public necessity provisions of the Uniform Administrative Procedures Act, T.C.A. § 4-5-209 and the Medical Assistance Act, T.C.A. § 71-5-134.

This rule is being amended to delete language that was inadvertently left in when a public necessity rule was promulgated pointing out that effective January 1, 2006 persons who are determined to be Severely and/or Persistently Mentally Ill are subject to lifetime limitations.

Tennessee Code Annotated, Section 71-5-134, states that in order to comply with or to implement the provisions of any federal waiver or state plan amendment obtained pursuant to the Medical Assistance Act as amended by Acts 1993, the Commissioner of Finance and Administration is authorized to promulgate public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209.

I have made a finding that these amendments are required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver.

For a copy of this public necessity rule, contact George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

J. D. Hickey  
Deputy Commissioner  
Tennessee Department of Finance  
and Administration

**PUBLIC NECESSITY RULES**

**OF**

**TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION**

**BUREAU OF TENNCARE**

**CHAPTER 1200-13-14  
TENNCARE STANDARD**

**AMENDMENT**

Paragraph (3) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new paragraph (3) which shall read as follows:

- (3) Maximum Lifetime Limitations.

## PUBLIC NECESSITY RULES

The following maximum lifetime limitations shall apply to the services outlined in paragraph (1) above. The managed care organizations shall not impose service limitations that are more restrictive than those described herein but benefits may be provided in excess of these amounts at the managed care organization's discretion. Determination of these limitations shall be based upon the managed care organization's payments for those services and shall exclude payments made by the enrollee in the form of deductibles, copayments, and/or special fees. Children under age 21 are exempt from limitations on substance abuse services.

Detoxification	Ten (10) days
Substance abuse benefits (Inpatient and outpatient)	\$30,000

**Authority:** T.C.A. 4-5-209, 71-5-105, 71-5-109, 71-5-134, Executive Order No. 23.

The Public Necessity rules set out herein were properly filed in the Department of State on the 13th day of March, 2006, and will be effective from the date of filing for a period of 165 days. The Public Necessity rules remain in effect through the 25th day of August, 2006. (03-09)



## **RULEMAKING HEARINGS**

### **TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES - 0250 CHILD PROTECTIVE SERVICES**

There will be a hearing before the Tennessee Department of Children Services to consider promulgation of rules pursuant to T.C.A. § 37-5-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204 and will take place in Conference Room 7A of the Cordell Hull Building located at 436 6<sup>th</sup> Avenue North, Nashville, TN 37243 at 9:00 a.m. on the 16<sup>th</sup> day of May, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Children's Services to discuss any auxiliary aids of services needed to facilitate participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Children's Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Children's Services ADA Coordinator, Maggie Winbush, Personnel Analyst 3, at 7<sup>th</sup> floor of the Cordell Hull Building, 8<sup>th</sup> Floor, 436 6<sup>th</sup> Avenue North, Nashville, TN 37243; (615) 532-5615.

For a copy of this notice of rulemaking hearing, contact: Shalonda Cawthon, Executive Director of Child Safety, 436 6<sup>th</sup> Avenue North, 8<sup>th</sup> Floor, Nashville, TN 37243-1290; (615) 741-8278.

0250-7-9-.01 through 0250-7-9-.10 is amended by deleting 0250-7-9-.01 through 0250-7-9-.10 in its entirety and adding the following so that as amended the rule shall read:

### **SUBSTANCE OF PROPOSED AMENDED RULES**

#### **RULES OF THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES CHILD PROTECTIVE SERVICES**

#### **CHAPTER 0250-7-9 CLASSIFICATION AND REVIEW OF REPORTS OF CHILD ABUSE/NEGLECT AND DUE PROCESS PROCEDURES FOR RELEASE OF CHILD ABUSE/NEGLECT RECORDS**

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## RULEMAKING HEARINGS

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### **0250-7-9-.01 DEFINITIONS**

- (1) “Abuse” exists when a person under the age of eighteen (18) is suffering from , has sustained, or may be in immediate danger of suffering from or sustaining a wound injury, disability or physical or mental condition caused by brutality, neglect or other actions or inactions of a parent, relative, guardian or caretaker. T.C.A. § 37-1-102(b)(1).
- (2) “Adult” means T.C.A. § 37-1-102(b)(3)
- (3) “Child” means T.C.A. § 37-1-102(b)(4)
- (4) “Child sexual abuse” means T.C.A. § 37-1-602(a)(3).
- (5) “Department” means the Tennessee Department of Children’s Services.
- (6) “Neglect” is defined T.C.A. § 37-1-102(b)(12).
- (7) “ Commissioner’s designee” means the a person designated by the Commissioner of the Tennessee Department of Children’s Services to act pursuant to this rule.
- (8) “Child care agency” T.C.A. § 37-1-602(a)(1).
- (9) “Indicated” T.C.A. § 37-1-406(i).
- (10) “Regional General Counsel” means the supervising attorney for one of the regional DCS office.
- (11) “Severe child abuse” T.C.A. § 37-1-102(b)(21).
- (12) “Record” includes files, reports, records, communications and working papers related to investigations or providing services, video tapes, photographs, electronic mails,
- (13) “Formal File Review” means the review established pursuant to 42 U.S.C. § 5106a(2)(B)(i) that is available to individuals whom the Department identifies or proposes to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect. The Department shall use a formal file review as the sole form of due process when the information regarding the report and identity of the perpetrator shall be placed in the registry identified in Rule 02507-9-.02(1)(c). The Department shall use a formal file review as the initial form of due process when the information regarding the report and identity of a perpetrator must be released to any organization identified in Rule 02507-9-.02(1)(a) or (1)(b), and shall also afford the right to a hearing as provided in Rule 0250-7-9-.07.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

## RULEMAKING HEARINGS

### 0250-7-9-.02 SCOPE OF RULES

- (1) These Rules shall apply to the following three categories of individuals:
  - (a) To individuals providing, care, supervision, instruction or treatment of a child or children either as an employee, employer or volunteer in:
    1. A child care program or child care agency as defined in T.C.A. §§ 49-1-1101 et seq. and §§ 37-5-501 et seq. or §§ 71-3-501 et seq.;
    2. In a public or private school for children;
    3. In a residential or institutional child caring entity;
    4. Through self employment; or
    5. In any other organization.
  - (b) To individuals whom the Department identifies or intends to identify as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the following:
    1. The individual's employer or prospective employer, whether the individual is, or will be, a paid employee or under contract;
    2. The licensing authority of the employer or the individual; or
    3. Any other person, entity or organization with which the individual is associated as a paid employee or contractor, or volunteer; and
  - (c) To individuals who are to be placed on the registry of perpetrators of abuse or neglect established pursuant to Part 10, Chapter 11 of Title 68 of the Tennessee Code Annotated.
- (2) These Rules establish procedures to release the identity and other related information of a perpetrator in "indicated" reports of abuse, severe child abuse, child sexual abuse, or neglect to organizations or persons identified in paragraph 1 of this Rule.
- (3) A release pursuant to these Rules shall be for purposes of protecting children from further abuse, severe child abuse, child sexual abuse, or neglect and for purposes directly connected with the administration of T.C.A. §§ 37-1-401 et seq.; 37-1-601 et seq.; 49-1-1101 et seq. and 71-3-501 et seq.
- (4) These Rules shall not apply when the Department intends to release or has released any information about an individual who is an alleged perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any of the following:
  - (a) any state(s) or federal law enforcement agency(ies) investigating a report of known or suspected child abuse or neglect or any crimes involving children;
  - (b) any state(s) District Attorney, Attorney General, or United States Attorney(s) or their authorized assistants, of the judicial districts or agencies involved in investigating or prosecuting crimes against children;

## RULEMAKING HEARINGS

- (c) any state(s) or federal grand jury by subpoena or presentation of evidence by the District Attorney or United States Attorney to such grand jury;
- (d) treatment professionals treating the child, his or her family, or the perpetrator;
- (e) in-house requests by employees of the Department for purposes consistent with enforcement of the child abuse and neglect or child welfare licensing laws of the State of Tennessee including disclosure to other individuals for purposes directly connected with the administration of Title 37, Chapter 1, Parts 4 and 6 or Title 71, Chapter 3, Part 5, of the Tennessee Code Annotated, other than disclosure to the employers, licensing authority other than the Department;
- (f) any state(s) or federal social service or other agencies investigating cases of child abuse or neglect or providing treatment or care for alleged or known victims of child abuse or neglect;
- (g) any court official, probation counselor, parole officer, designated employee of any Department of Correction or other similarly situated individual charged with the responsibility of preparing information to be presented in any administrative or judicial proceeding concerning any individual charged with or convicted of any offense involving child abuse, child sexual abuse, or neglect;
- (h) to the court, administrative board or hearing, the officials or employees thereof in the performance of their duties, the parties, or their legal representatives in any judicial or administrative proceeding or before any board or hearing officer;
- (i) for the purpose of protecting a child or children from physical or severe child abuse, neglect, or child sexual abuse, except in such situation when such court, administrative hearing, board, or hearing officer, other than the Department of Children's Services, is adjudicating a case affecting the perpetrator's ability to remain or become employed or licensed, in which situation such information shall be released only by order of the court or hearing officer;
- (j) any release of information to the Departments of Education or Human Services pursuant to T.C.A. §§ 37-5-512(a)(2) and -512(a)(3) regarding an individual who is the subject of an on-going or a completed investigation of abuse, severe child abuse, child sexual abuse, or neglect by the Department may be released to the Departments of Education and Human Services.
  - 1. Any further release of information by the Departments of Education or Human Services of a finding by the Department that an individual has been classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall occur according to the procedures established by these Rules.; or
- (k) Any release to a foster care agency contractor of the Department for purposes of determining whether a child in the Department's custody should be placed with an individual.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

## RULEMAKING HEARINGS

### 0250-7-9-.03 PROHIBITED RELEASES

- (1) Any report of abuse, severe child abuse, child sexual abuse, or neglect is confidential pursuant to T.C.A. §§ 37-1-409(a)(1) and 37-1-609(a).
- (2) Any unauthorized release of a report of abuse, severe child abuse, child sexual abuse, or neglect constitutes a class B misdemeanor.
- (3) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b), for purposes of pre-employment screening or licensing, to identify any individual as a perpetrator abuse, severe child abuse, child sexual abuse, or neglect.
- (4) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to identify any individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.
- (5) Unless the Department has complied with the requirements imposed by these Rules, the Department shall not release any information from its records to inform of any individual's status as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that requests this information for purposes of routine or random screening of current employees, volunteers, or associates.
- (6) If the Department does not begin procedures to release the identity and other related information of a perpetrator in an "indicated" report of abuse, severe child abuse, child sexual abuse, or neglect within two years of the initial classification, the Department shall not release any information as to that report. This provision shall not, however, require expunction of this information from the Department's internal records.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

### 0250-7-9-.04 CRITERIA FOR CLASSIFICATION OF REPORTS OF CHILD ABUSE/ NEGLECT AS "INDICATED"

- (1) A report made against an alleged perpetrator shall be classified as "indicated" if the preponderance of the evidence, in light of the entire record, proves that the individual committed abuse, severe child abuse, child sexual abuse, or neglect. Proof of one or more of the following factors, linking the abusive act(s) to the alleged perpetrator may constitute a preponderance of the evidence:
  - (a) medical and/or psychological information from a licensed physician, medical center, or other treatment professional, that substantiates that physical abuse, sexual abuse, or severe physical abuse occurred;
  - (b) an admission by the perpetrator;
  - (c) the statement of a credible witness or witnesses to the abusive or neglectful act;
  - (d) the child victim's statement that the abuse occurred;

## RULEMAKING HEARINGS

- (e) physiological indicators or signs of abuse or neglect, including, but not limited to, cuts, bruises, burns, broken bones or medically diagnosed physical conditions;
- (f) physical evidence that could impact the classification decision:
- (h) The existence of behavioral patterns that may be indicative of child abuse/neglect and corroborates other evidence of abuse, severe child abuse, child sexual abuse, or neglect should be examined;
- (i) The existence of circumstantial evidence linking the alleged perpetrator to the abusive or neglectful act(s) (e.g., child was in care of the alleged perpetrator at the time the abuse occurred and no other reasonable explanation of the cause of the abuse exists in the record).

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

### 0250-7-9-.05 WHEN RIGHTS UNDER THIS CHAPTER ATTACH

- (1) An individual whom the Department has classified in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect shall have the right to a formal file review and to a hearing under these Rules if:
  - (a) The Department intends to or shall release the individual’s name under the emergency procedures of Rule 0250-7-3-.11 to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b); or
  - (b) The Department intends to or shall release the individual’s name in non-emergency situations to any organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (2) An individual whom the Department has been classified in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c) shall only have the right to a formal file review under these Rules.
  - (a) This paragraph applies when the Department will not identify or does not intend to identify to any organization or person in Rules 0250-7-9-.02(1)(a) or (1)(b) that it has classified an individual in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect.
  - (b) If after an individual exhausts the due process afforded by paragraph 2 of this Rule, and if within the two-year period from the date of the initial classification of the report the Department intends to identify to any organization or person in Rules 0250-7-9-.02(1)(a) or (1)(b) that it has classified the individual in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall not release this information unless the individual is afforded the right to a hearing under Rule 0250-7-9.07. The Department shall insure that the individual is notified in accordance with these Rules.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

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### 0250-7-9-.06 RIGHT TO NOTICE AND OPPORTUNITY FOR FORMAL FILE REVIEW

- (1) Within 10 business days after the Department has classified an individual in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department shall notify, in writing at the individual’s last known address, of the classification and shall inform the individual that he or she may request a formal file review by the Commissioner’s designee to determine whether the report has been properly classified as “indicated.”
  - (a) If the indicated perpetrator in the classified report is a minor in the custody of his or her parent or guardian, the Department shall notify the minor with attention to the parent or guardian. Either the parent or guardian may request a formal file review on the minor’s behalf.
  - (b) If the indicated perpetrator in the classified report is a minor in State custody, the Department shall notify the minor and Child Protective Services. The Department shall also notify the Regional General Counsel.
- (2) If the individual whom the Department has classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report falls under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b), the Department shall also determine whether the emergency procedures of Rule 0250-7-9-.11 apply.
- (3) The notice to obtain a formal file review shall contain, at a minimum, the following:
  - (a) that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report investigated by the Department;
  - (b) that the individual may request a formal file review by the Commissioner’s designee within 10 business days of the date of the notice;
  - (c) that failure to submit a request for a formal file review within 10 business days, absent a showing of good cause, shall result in the classified report becoming final and the individual shall waive any right to a formal file review;
  - (d) that the request for a formal file review shall be submitted to State of Tennessee Department of Children’s Services, Child Protective Services Division, Formal File Review, Cordell Hull Building, 436 Sixth Ave. North, Nashville, Tennessee, 37243; and
  - (e) that if the individual provides care, supervision, instruction or treatment to a child or children to any organization or individual specified in Rule 0250-7-9-.02(1)(a) or (1)(b), the formal file review decision may have an impact on the individual’s employment, and that, in this case, the individual also shall have the right to an administrative hearing under Rule 0250-7-9-.07.
- (4) The Department shall date-stamp all requests for formal file reviews on the date received.
- (5) The Department shall respond to a timely filed request for a formal file review within 10 business days of receipt by sending written notice of the individual’s obligations pursuant to a formal file review process. This additional notice shall include, at a minimum, the following:
  - (a) That pursuant to the Department’s Rules the individual may submit additional information on his or her behalf to the address identified in paragraph 3(d) of this Rule;
  - (b) That the individual must submit the additional information within 30 business days of the date of the notice;

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- (c) That if the information is not timely submitted, the formal file review shall proceed with the information provided in the file and that the individual's right to submit additional information shall be waived; and
  - (d) That the formal file review shall be completed within 90 business days of the date of the notice.
- (6) Unless the emergency procedures in Rule 0250-7-9-.11 apply, during the 10-business day period in which an individual may request a formal file review, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report. In addition, the Department shall not disclose any details about the case. The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.
- (7) In conducting the formal file review, the Commissioner's designee shall determine whether the evidentiary standards set forth in Rule 0250-7-9-.04 have been satisfied.
- (8) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.04 are not met, the report shall be reversed and it shall be classified as "not indicated." The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the organizations or persons identified in Rule 0250-7-9-.02(1)(a) or (1)(b). Nothing in these rules shall be construed to require the expunction of internal case records maintained by the Department.
- (a) Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:
- 1. that the formal file review has classified the report as "not indicated";
  - 2. that the Department will not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the organizations identified in Rule 0250-7-9-.02(1)(a) or (1)(b); and
  - 3. that the Department shall not place the individual's identity in the registry identified in Rule 0250-7-9-.02(1)(c).
- (9) If the Commissioner's designee determines that the proof in the report supports a different conclusion than that reached by the Department, the report shall be modified and it shall be classified accordingly. The Commissioner shall notify the individual in accordance with paragraphs 8 or 10 of this Rule.
- (10) If the Commissioner's designee determines that the standards in Rule 0250-7-9-.03 are met, the report shall be upheld and it shall be classified as "indicated."
- (a) Within 10 business days of the date of the formal file review, the Department shall send to the individual who was classified in a report of abuse, severe child abuse, child sexual abuse, or neglect at his or her last known address written notice containing, at a minimum, the following:



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1. that the individual has been identified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report investigated by the Department; and
  2. that, after conducting a formal file review, the “indicated” report was upheld.
- (b) If the individual falls under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b), the notice in this paragraph shall also contain, at a minimum, the following:
1. that the individual may request a hearing within 10 business days of the date of the notice before an administrative law judge by filling out an attached request for administrative hearing;
  2. that, if the individual requests a hearing, he or she shall complete the attached form and mail or fax it to the Department’s Administrative Procedures Division;
  3. that, if the individual fails to timely request a hearing absent good cause, he or she shall waive the right to an administrative hearing; and
  4. that, if the individual fails to timely request a hearing absent good cause, the Department will release its finding of abuse, severe child abuse, child sexual abuse, or neglect to any individual or organization specified in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (c) If, however, the individual falls under the category set forth in Rule 0250-7-9-.02(1)(c), the notice in addition to containing the information in this paragraph 8(a) of this Rule shall also state the following:
1. That if, within two years from the date of the initial classification of the report, the individual intends to provide care, supervision, instruction or treatment to a child or children to any organization or for any person specified in Rules 0250-7-9-.02(1)(a) or (1)(b), the individual also shall have the right to an administrative hearing under Rule 0250-7-9-.06.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

### **0250-7-9-.07 RIGHT TO NOTICE AND OPPORTUNITY FOR ADMINISTRATIVE HEARING**

- (1) An individual whom the Department has classified in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and whose classification has been upheld pursuant to a formal file review may request an administrative hearing before a hearing officer of the Administrative Procedures Division of the Department.
- (2) An individual shall request an administrative hearing within 10 business days from the date of the notice of the outcome of the formal file review. A request for a hearing submitted before a case file review has been completed shall be invalid.
- (3) Unless the emergency procedures in Rule 0250-7-9-.11 apply, during the 10-business day period in which an individual may request a hearing, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report. In addition, the Department shall not disclose any details about the case.

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The Department may only confirm that a child abuse, severe child abuse, child sexual abuse, or neglect investigation has commenced.

- (a) If the individual timely requests a hearing, the Department may only release a statement stating that a hearing concerning the individual pursuant to the child abuse laws of this State is currently pending.
- (4) If the individual timely requests a hearing, the Department shall schedule a hearing and give the individual adequate notice of the hearing, as provided by Rules 0250-5-4.
  - (b) The hearing will be held, and an initial order entered therein, within 90 business days of the date of the notice required in Rule 0250-7-9-.06(10), unless:
    - 1. the time limit is extended or waived by agreement of the parties, or for good cause shown; or
    - 2. the proceedings are stayed pursuant to Rule 0250-7-9-.08.
- (5) If the individual fails timely to request a hearing, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall be then be available for dissemination to any organization or individual identified in Rules 0250-7-9-.02(1)(a) or (1)(b) and the individual's identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c).
- (6) An individual who fails timely to request a hearing may be granted a hearing provided that he or she shows good cause for his or her failure to make a timely request.
  - (a) Good cause is limited to a failure to receive the notice referred to in Rule 0250-7-9-.06(10), severe illness, or some other circumstance that substantially prevented the individual from timely requesting a hearing.

**Authority:** T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

### 0250-7-9-.08 STAY OF ADMINISTRATIVE PROCEEDINGS

- (1) The Department shall stay all administrative proceedings under these Rules:
  - (a) if an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect has been arrested or indicted on criminal charges that are derived from the same allegations that caused the Department to investigate; or
  - (b) if an individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect is the subject of other administrative proceedings that are derived from the same allegations that caused the Department to investigate.
- (2) If the arrest, indictment, or initiation of other judicial or other administrative proceedings occurs any time prior to the entry of a final order by the Department, all proceedings under these Rules shall be immediately stayed pending final resolution (including appeals) of the judicial or administrative proceedings. Provided, however, that the Department shall notify an individual in accordance

## RULEMAKING HEARINGS

with Rules 025-7-9-.06, 0250-7-9-.07, or 0250-7-9-.11, as appropriate. The individual shall comply with the provisions of these Rules, as appropriate, in order to preserve his or her future rights to a hearing or to judicial review. During the stay, unless the emergency procedures in Rule 0250-7-9-.11 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an "indicated" report until the proceedings referred to in paragraph 1 of this Rule become final. The Department may only release the fact that judicial or administrative proceedings involving allegations of abuse, severe child abuse, child sexual abuse, or neglect by the individual are pending before a specified court or administrative proceeding.

- (3) If a criminal prosecution results in a conviction or guilty plea for any offense listed in T.C.A. § 37-1-602(a)(2), or for any act which would constitute physical abuse, sexual abuse, or severe physical abuse as defined in T.C.A. § 37-1-102(10) and (19), or if the individual is found guilty or pleads guilty to any lesser offense derived from the offenses or acts alleged under T.C.A. § 37-1-602(a)(2) or T.C.A. § 37-1-102(10) and (19), or if any court or administrative proceeding results in a judicial or administrative adjudication that the individual has committed, or has knowingly allowed to be committed, any act which would constitute physical abuse, sexual abuse, or severe physical abuse, as defined in T.C.A. § 37-1-102(10) and (19) or any act which constitutes child sexual abuse as defined in T.C.A. § 37-1-602(2), then such conviction and/or adjudication will be conclusive evidence that the individual is the perpetrator classified in the "indicated" report and the individual will have no right to a hearing provided for in 0250-7-9-.07 in regard to that particular report. In this event, the Department may release information about the perpetrator as permitted under these Rules.
  - (a) If the criminal, civil or administrative proceeding does not result in a conviction or in a finding as specified in paragraph 3 of this Rule, including pretrial diversion, this fact shall be admissible in the Department's administrative hearing, but shall not be conclusive on the issue of whether the report is properly classified as "indicated."
- (4) If administrative proceedings were stayed pursuant to this Rule, they shall resume at the point at which they were stayed if the alleged perpetrator so requests such in writing to Tennessee Department of Children's Services, Case File Review, 8<sup>th</sup> Floor, Cordell Hull Building, Child Protect Services, 436 6<sup>th</sup> Ave. N., Nashville, Tennessee 37243, within 30 days of entry of a final order by a court or other administrative body favorably disposing of the issue of child abuse involving the alleged perpetrator or of any disposition other than guilty by a court in a criminal proceeding. If the alleged perpetrator fails timely to make such a written request, he or she shall waive his or her rights to a hearing in regard to that report. The indicated report and information regarding the perpetrator will be released as permitted under these Rules.
- (5) Unless the individual has waived his or her rights to a formal file review or to an administrative hearing by failing timely to request same, if administrative proceedings have been stayed, the Department shall notify in writing the individual as follows:
  - (a) that administrative proceedings have been stayed pending the final outcome of judicial or other administrative proceedings concerning allegations of child abuse involving the individual;
  - (b) that the administrative proceedings under these rules will be reinstituted at the point they were stayed only if the individual requests such in writing to the local office of the Department which issued the original notice within 30 days of the entry of a final order by the court or

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administrative tribunal or verdict by a criminal court (unless the order or verdict is as specified in paragraph (1)(b) above);

- (c) if the individual fails timely to make such a written request, he or she will shall waive his or her rights to an administrative hearing in regard to the report.

**Authority:** *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*

### **0250-7-9-.09 CONDUCT OF THE ADMINISTRATIVE HEARING**

- (1) The hearing provided for in 0250-7-9-.07 will be conducted in accordance with the provisions of the Uniform Administrative Procedures Act and of Rules 0250-5-6.
- (2) In hearings pursuant to 0250-7-9-.07, the sole issue for the hearing officer is to determine whether the standards for classifying the report as “indicated,” as provided in 0250-7-9-.03 have been met. In making this determination, the hearing officer shall consider whatever relevant and admissible proof the individual offers that the report is not properly classified as indicated and shall further consider any competent and admissible proof concerning the dynamics of child abuse relevant to whether the classification is proper.
- (3) Unless the emergency procedures in Rule 0250-7-9-.11 apply, the Department shall not disclose that the individual has been classified as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report until the individual has exhausted all of his or her appeal rights under these Rules, including judicial review of a final order by the Department. The Department may only release the fact that a hearing concerning the individual pursuant to the child abuse laws of the State is pending.
- (4) If the Department, or a court of competent jurisdiction in the event of judicial review, concludes that the standards in Rule 0250-7-9-.04 are not met, the report shall be classified as “not indicated.” The Department shall not release information from its records identifying the individual as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect to the organizations or persons identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
  - (a) If the Department had previously disclosed to an organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) that an individual was under investigation under the child abuse laws of this State, the Department shall forthwith notify that organization or person that the report was not “not indicated.” Nothing in this rule shall be construed to require the expunction of any information from internal case records maintained by the Department.
- (5) The final order shall include a statement of the available procedures and time limits for seeking reconsideration and/or judicial review.
- (6) The final order shall also comply with Rules 0250-7-8-.03 and 0250-7-10.

**Authority:** *T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).*

## RULEMAKING HEARINGS

### 0250-7-9-.10 EVIDENCE; STANDARD OF PROOF

- (1) Admissibility of evidence in hearings pursuant to 0250-7-9-.07 is governed by the provisions of T.C.A. §4-5-313. Provided, however, that “evidence admissible in a court” shall, for purposes of hearings pursuant to this chapter, refer also to evidence admissible in any juvenile court of this state. Provided further that the evidentiary provisions of Title 24, Chapter 7, Part I of the Tennessee Code Annotated and T.C.A. §§ 37-1-401 et seq. and 37-1-601 et seq., including the use of videotape testimony, shall be applicable to such hearings.
- (2) An individual will be indicated as the perpetrator of abuse, severe child abuse, child sexual abuse, or neglect only after the case is proven by a preponderance of the evidence.

**Authority:** T.C.A. §§4-5-226(b)(2); 4-5-313; 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

### 0250-7-9-.11 ALLEGED PERPETRATORS WITH CURRENT ACCESS TO CHILDREN; EMERGENCY NOTIFICATION

- (1) The provisions of this Rule apply to individuals classified as perpetrators of abuse, severe child abuse, child sexual abuse, or neglect in an “indicated” report who fall under the categories set forth in Rules 0250-7-9-.02(1)(a) or (1)(b).
- (2) The purpose of this Rule is to determine whether an alleged perpetrator abuse, severe child abuse, child sexual abuse, or neglect poses an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
- (3) As soon as reasonably possible after the Department has investigated and recommended to classify an individual in an “indicated” report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect, the Department may conduct an ex parte formal file review under Rule 0250-7-9-.06.
  - (a) If the Commissioner’s designee determines that the standards in Rule 0250-7-9-.04 are met, the report shall be upheld and it shall be classified as “indicated.”
  - (b) The Commissioner’s designee also shall determine whether there is an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access.
    1. If such threat exists, the Department shall follow the procedures set forth in paragraphs (4), (5) and (6) of this Rule.
  - (c) If no such immediate threat exists, the Department shall not reveal the alleged perpetrator’s identity and shall follow the procedures set forth in Rule 0250-7-9-.06.
- (4) As soon as reasonably possible after the Commissioner’s designee has determined that an immediate threat to the health, safety, or welfare of a child or children to whom the alleged perpetrator has access exists, the Department shall notify in writing to both the alleged perpetrator and to the organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b).
  - (a) The notice shall contain the information set forth in Rule 0250-7-9-.06(10)(b); and

## RULEMAKING HEARINGS

- (b) A statement that the organization or person identified in Rules 0250-7-9-.02(1)(a) or (1)(b) with which the individual is associated shall receive notice of the Department's determination.
  - 1. The notice shall also contain the following:
    - i. that the organization or person shall ensure that the individual is not a threat to the safety of any child in their care; and
    - ii. that the individual has been notified of his or her rights to a hearing on the allegations, and that the organization or person shall be notified of the final decision regarding the allegations.
- (5) If the individual fails timely to request a hearing absent good cause, the individual shall waive his or her right to a hearing. The Department's "indicated" report regarding the individual shall be then be available for dissemination to any organization or individual identified in Rules 0250-7-9-.02(1)(a) or (1)(b) and the individual's identity shall be placed in the registry identified in Rule 0250-7-9-.02(1)(c).
- (6) If the individual timely requests a hearing, the Department shall follow the procedures set forth in Rule 0250-7-9-.07(4).
- (7) An individual whom the Department has classified in an "indicated" report as a perpetrator of abuse, severe child abuse, child sexual abuse, or neglect and who poses an immediate threat to the health, safety, or welfare of a child or children as determined by the Commissioner's designee may request a hearing pursuant to Rule 0250-7-9-.07.
- (8) Following final resolution of the case, whether by administrative hearing, court order, or waiver by the alleged perpetrator, the Department shall promptly notify of its decision the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b).
  - (a) If the classification of the report as "indicated" is upheld, the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b) shall continue to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.
  - (b) If the classification of the report as "indicated" is reversed, the organization or person set forth in Rules 0250-7-9-.02(1)(a) or (1)(b) will not be required to assure that the individual is not a threat to the safety of any child in their care, and the notice shall so state.

Authority: T.C.A. §§4-5-226(b)(2); 37-1-409; 37-1-612; 37-1-616; 37-5-101; 37-5-105; 37-5-106; 37-5-112(a).

The notice of rulemaking set out herein was properly filed in the Department of State on the 7th day of March, 2006. (03-03)

## RULEMAKING HEARINGS

### **DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF UNDERGROUND STORAGE TANKS**

The Tennessee Petroleum Underground Storage Tank Board will hold a public hearing to receive comments concerning amendments to the Rules of the Department of Environment and Conservation Division of Underground Storage Tanks Chapter 1200-1-15 Underground Storage Tank program pursuant to T.C.A. § 68-215-113. This hearing will be conducted as prescribed by the Uniform Administrative Procedures Act T.C.A. § 4-5-201 et. seq.

The hearing will take place in the 17<sup>th</sup> Floor Conference Room at the L & C Tower, 401 Church Street, Nashville, Tennessee at 2:00 P.M. CST on Thursday, May 25, 2006.

These rules are being promulgated in response to the requirements in the Underground Storage Tank Compliance Act of 2005 which was a part of the Federal Energy Act. These rules are being promulgated to enable Tennessee to comply with the minimum requirements for secondary containment that are in the federal law. In addition, these rules will require new installations or replacements within one thousand (1,000) feet of a spring that serves as a drinking water supply to meet similar requirements by February 8, 2012.

Written comments will be considered if received by close of business, May 31, 2006, at the office of the Technical Secretary, Tennessee Petroleum Underground Storage Tank Board, 4<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531. Written comments may also be submitted via e-mail to Donna.Washburn@state.tn.us .

Individuals with disabilities wishing to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to the date of the hearing or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation, Kim McCrary, ADA Coordinator, 12th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-0437, 615-532-0211.

For complete copies of the text of the notice or for answers to questions concerning this notice, please contact Donna Washburn, Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 4<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1531, 615-532-0987. The notice and copies of the proposed rules are posted on the web site for the Division of Underground Storage Tanks, <http://www.state.tn.us/environment/ust>.

### **SUBSTANCE OF PROPOSED RULES**

Paragraph (2) Program Scope: Applicability of Rule 1200-1-15-.01 Program Scope, Definitions and Proprietary Information is amended by deleting subparagraph (c) in its entirety and replacing it with the following:

(c) Deferrals – Emergency generator tanks.

1. Except as provided for in parts 2 through 5 of this subparagraph, release detection requirements in rule 1200-1-15-.04 do not apply to any UST system that stores fuel solely for use by emergency power generators.

## RULEMAKING HEARINGS

2. New tanks or piping components of an emergency generator UST system installed on or after February 8, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) if the tank and/or piping is located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well.
3. Tank or piping components of an emergency generator UST system replaced on or after February 8, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) and (6) if the tank and/or piping is located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well.
4. New tanks or piping components of an emergency generator UST system installed on or after February 8, 2012, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) if the tank and/or piping is located within one thousand (1,000) feet of a spring being used as a drinking water supply.
5. Tank or piping components of an emergency generator UST system replaced on or after February 8, 2012, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rule 1200-1-15-.02(2)(a) and (b) and (6) if the tank and/or piping is located within one thousand (1,000) feet of a spring being used as a drinking water supply.

Paragraph (4) Definitions of Rule 1200-1-15-.01 Program Scope, Definitions and Proprietary Information is amended by inserting the following definitions in the appropriate locations alphabetically:

“Community water system” means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.

“Potable drinking water well” means any hole, either dug, driven or drilled, that extends into the earth until it meets a ground water bearing formation or aquifer containing water used for or intended for human consumption, whether for public, private or domestic use.

**Authority:** *T.C.A. § 4-5-201 et seq.; T.C.A. § 68-215-101 et. seq., T.C.A. § 68-215-107, T.C.A. § 68-215-108, and T.C.A. § 68-215-113.*

Rule 1200-1-15-.02 UST Systems: Installation and Operation is amended as follows:

Subparagraph (a) of paragraph (1) Installation is amended by adding a new part, to be designated as part 2, and renumbering the existing part 2 as part 3. The new part shall read as follows:

2. Submit a pre-installation/replacement water use survey conducted in accordance with guidance provided by the division and in a format established by the division for all installations that commence on or after February 8, 2007; and



## RULEMAKING HEARINGS

Paragraph (1) Installation is further amended by inserting two additional subparagraphs, to be designated as subparagraphs (c) and (d), and renumbering the existing subparagraphs (c) and (d) as (e) and (f) respectively. The new subparagraphs shall read as follows:

- (c) On or after February 8, 2007, all UST systems installed within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well, as determined by the pre-installation/replacement water use survey performed in accordance with part (a)2 of this paragraph, shall be secondarily contained in accordance with paragraph (2) of this rule.
- (d) On or after February 8, 2012, all UST systems installed within one thousand (1,000) feet of a spring being used as a drinking water supply, as determined by the pre-installation/replacement water use survey, shall be secondarily contained in accordance with paragraph (2) of this rule.

Paragraph (1) Installation is further amended by deleting part (c)2 in its entirety and replacing it with the following:

- 2. Prior to placing product into the tank, tank compartment and/or UST system, spill and overfill prevention measures shall be implemented in accordance with paragraph (3) of this rule.

Paragraph (1) Installation is further amended by deleting part (c)5 in its entirety and replacing it with the following:

- 5. Immediately protect against corrosion in accordance with paragraph (4) of this rule.

Rule 1200-1-15-.02 is further amended by adding a new paragraph to be designated as paragraph (2). The new paragraph shall read as follows:

### (2) Secondary Containment

- (a) Tanks. Tanks that are required to be secondarily contained in accordance with rule 1200-1-15-.01(2)(c), with subparagraphs (1)(c) or (d) of this rule, or with paragraph (6) of this rule shall comply with the following:
  - 1. Tanks shall be double-walled;
  - 2. Tanks shall meet the interstitial monitoring requirements of rule 1200-1-15-.04(3)(g)1;
  - 3. Tanks shall prevent the release of petroleum to the environment for the operational life of the underground storage tanks;
  - 4. Tanks shall contain a release until detected and removed; and
  - 5. Tanks shall be monitored for a release at least every thirty (30) days.
- (b) Piping. Piping that is required to be secondarily contained in accordance with rule 1200-1-15-.01(2)(c), with subparagraphs (1)(c) or (d) of this rule, or with paragraph (6) of this rule shall comply with the following:

## RULEMAKING HEARINGS

1. Piping shall comply with one of the following:
    - (i) Piping shall be one hundred percent (100 %) double-walled; or
    - (ii) Piping shall be secondarily contained with single-walled piping ends that terminate in tank and dispenser sumps that meet the requirements of subparagraph (c) of this paragraph;
  2. Piping shall meet the interstitial monitoring requirements of rule 1200-1-15-.04(3)(g)1;
  3. Piping shall prevent the release of petroleum to the environment for the operational life of the piping;
  4. Piping shall contain a release until detected and removed; and
  5. Piping shall be monitored for a release at least every thirty (30) days.
- (c) Motor fuel dispensers. Motor fuel dispensers that are required to be secondarily contained in accordance with subparagraphs (1)(c) or (d) of this rule or with paragraph (6) of this rule shall comply with the following:
1. The containment sump shall be liquid tight on the sides, the bottom and at any penetrations;
  2. The containment sump shall be compatible with the petroleum products stored in the UST system; and
  3. The containment sump shall be designed to allow for a visual inspection and access to the components of containment systems, including that used for piping.

Rule 1200-1-15-.02 is further amended by adding a new paragraph to be designated as paragraph (6). The new paragraph shall read as follows:

### (6) Replacement

Tank owners and/or operators initiating any replacement of tanks, piping or motor fuel dispensers that commences on or after February 8, 2007, shall comply with the following:

- (a) At least fifteen (15) days prior to replacement of any tanks, piping and/or dispensers, owners and/or operators shall notify the divisions in the following manner:
  1. Submit a pre-replacement notification form for all the petroleum underground storage tanks, piping and/or dispensers that are being replaced; and
  2. Submit a pre-installation/replacement water use survey conducted in accordance with guidance provided by the division and in a format established by the division prior to any replacement of tanks, piping and/or motor fuel dispensers.

## RULEMAKING HEARINGS

- (b) Tank owners and/or operators initiating any replacement of tanks, piping and/or motor fuel dispensers located within one thousand (1,000) feet of an existing well head or surface water intake for an existing community water system or an existing potable drinking water well as determined by the pre-installation/replacement water use survey required by part (a)2 of this paragraph shall install secondary containment and interstitial monitoring for the replacement tanks and piping and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule for replacements that commence on or after February 8, 2007.
- (c) Tank owners and/or operators initiating any replacement of tanks, piping and/or motor fuel dispensers located within one thousand (1,000) feet of a spring being used as a drinking water supply as determined by the pre-installation/replacement water use survey required by part (a)2 of this paragraph shall install secondary containment and interstitial monitoring for the replacement tanks and piping and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule for replacements that commence on or after February 8, 2012.
- (d) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (b) or (c) of this paragraph shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes located at the underground storage tank facility.
- (e) Unless determined to be a piping repair by the division in accordance with subparagraph (f) of this paragraph, if piping is being replaced, all piping connected to that particular underground storage tank shall be removed and secondarily contained piping with interstitial monitoring shall be installed in accordance with paragraph (2) of this rule.
- (f) Piping repairs:
  - 1. The division may authorize a repair of underground piping, which shall not be considered a replacement;
  - 2. Requests for division authorization of piping repairs shall be submitted in writing;
  - 3. The division may request additional information about the proposed repair as deemed necessary; and
  - 4. Requests for division authorization of piping repairs shall be approved or denied by the division
- (g) Replacement of a motor fuel dispenser has occurred and is subject to the provisions of this paragraph as well as the requirements in subparagraph (2)(c) of this rule if the existing dispenser is removed and replaced with a new dispenser and the equipment used to connect the dispenser to the piping is replaced. Connecting equipment includes one of the following:
  - 1. Components beneath the dispenser that are above the shear valve in a pressurized piping system; or
  - 2. Components beneath the dispenser that are above the union in a suction piping system.

## RULEMAKING HEARINGS

Rule 1200-1-15-.02 is further amended by renumbering the existing paragraphs in the rule as follows: the existing paragraph (2) Spill and Overfill Prevention shall be renumbered as paragraph (3), the existing paragraph (3) Corrosion Prevention shall be renumbered as paragraph (4), the existing paragraph (4) Compatibility shall be renumbered as paragraph (5), and the existing paragraph (5) Repairs Allowed shall be renumbered as paragraph (7).

The paragraph newly numbered as paragraph (7) Repairs Allowed of rule 1200-1-15-.02 is amended by deleting subparagraphs (c) and (e) in their entirety and replacing them with the following language:

- (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced in accordance with subparagraphs (6)(a) through (d) of this rule. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.
- (e) Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with parts (4)(c)2 and 3 of this rule to ensure that it is operating properly.

**Authority:** *T.C.A. § 4-5-201 et seq; T.C.A. § 68-215-101 et seq.; and T.C.A. § 68-215-107.*

Paragraph (1) Notification Requirements of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping shall be amended by deleting part 2 of subparagraph (d) and replacing it in its entirety to read as follows:

- 2. Cathodic protection of steel tanks and piping under rule 1200-1-15-.02(4)(a) and (b);

Paragraph (1) Notification Requirements of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping is further amended by adding a new paragraph to be designated as paragraph (h), which shall read as follows:

- (h) Any owner or operator who replaces a tank, the underground piping associated with an underground storage tank or a motor fuel dispenser, with the replacement commencing on or after February 8, 2007, shall submit a pre-replacement notification form in accordance with rule 1200-1-15-.02(6)(a).

Paragraph (2) Reporting and Record Keeping of Rule 1200-1-15-.03 Notification, Reporting and Record Keeping shall be amended by deleting parts 1, 2 and 3 of subparagraph (b) in their entirety and replacing them so that parts 1 through 3 shall read as follows:

- 1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (rule 1200-1-15-.02(4)(a)5; rule 1200-1-15-.02(4)(b)3);
- 2. Documentation of operation of corrosion protection equipment (rule 1200-1-15-.02(4)(c));
- 3. Documentation of UST system repairs (rule 1200-1-15-.02(7)(f));

**Authority:** *T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107.*

## RULEMAKING HEARINGS

Rule 1200-1-15-.04 Release Detection is amended by adding a new subparagraph at the end of paragraph (1) General Requirements for Release Detection to be designated as subparagraph (1)(g), which shall read as follows:

- (g) Under-dispenser containment sumps for motor fuel dispensers required by rule 1200-1-15-.02(1)(c) or (d) or (6) to be secondarily contained in accordance with rule 1200-1-15-.02(2)(c) shall be visually inspected at least quarterly, that is, at least once every three (3) months. A log of these inspections, showing at a minimum the last twelve (12) months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum in the sumps. If petroleum is observed in the dispenser sump, the petroleum shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

Paragraph (2) Requirements for Petroleum UST Systems of rule 1200-1-15-.04 Release Detection is amended by deleting part (a)1 in its entirety and replacing it with the following:

1. UST systems that meet the performance standards in rule 1200-1-15-.02, and the monthly inventory control requirements in subparagraphs (3)(a) or (b) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule) at least every five (5) years until ten (10) years after the tank was installed or upgraded in compliance with the performance standards in rule 1200-1-15-.02. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with rule 1200-1-15-.02 (4)(a)2.(v)(III) shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule.

**Authority:** *T.C.A. § 4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107.*

Paragraph (1) Temporary Closure of rule 1200-1-15-.07 Out-Of Service UST Systems and Closure is amended by deleting subparagraph (a) in its entirety and replacing it with the following:

- (a) When an UST system is temporarily closed, owners and/or operators shall continue operation and maintenance of corrosion protection in accordance with rule 1200-1-15-.02(4), and any release detection in accordance with rule 1200-1-15-.04. Rule 1200-1-15-.05 and rule 1200-1-15-.06 shall be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than two and one-half (2.5) centimeters (one inch) of residue remains in the system.

Paragraph (2) Substandard UST Systems of rule 1200-1-15-.07 Out-Of Service UST Systems and Closure is amended by deleting the first sentence in its entirety and replacing it so that the paragraph shall read as follows:

Unless directed to do otherwise by the division owners and/or operators of an UST system which does not meet the requirements in rule 1200-1-15-.02(3) and (4) shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule, except that parts (4)(a)6 and 7 of this rule shall not apply to a substandard UST system. The substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within sixty (60) days of division approval of the Application for Permanent Closure of Underground Storage Tanks.

## RULEMAKING HEARINGS

**Authority:** *T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107.*

Paragraph (8) Fund Ineligible Costs of Rule 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund is amended by deleting the second sentence in subparagraph (a) in its entirety and replacing it so that subparagraph (a) shall read as follows:

- (a) Costs of replacement, repair, removal, maintenance, and/or retrofitting of affected tanks and associated piping and any costs not integral to site rehabilitation shall not be eligible for payment or reimbursement by the fund. Costs of replacement, repair, removal, maintenance, and/or retrofitting of tanks and associated piping to comply with the requirements of rule 1200-1-15-.02(3) and (4) shall not be eligible for fund payment or reimbursement. Replacement of asphalt or concrete shall not be eligible for fund payment or reimbursement.

Paragraph (10) Requirements for Fund Coverage of Corrective Action Costs of Rule 1200-1-15-.09 Administrative Guidelines and Procedures for the Tennessee Petroleum Underground Storage Tank Fund is amended by deleting the first sentence in subparagraph (c) and replacing it so that subparagraph (c) shall read as follows:

- (c) Effective December 22, 1998, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner and/or operator shall submit documentation to the division verifying that the tanks are in compliance with the upgrading and performance standards set forth in rule 1200-1-15-.02(3)(a) and (4)(a) and (b). On the effective date of this rule, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner and/or operator shall submit documentation to the division verifying the performance of release detection as required by rule 1200-1-15-.04 at the time of the release. The owner and/or operator shall submit this documentation to the division within thirty (30) days of the date the release is confirmed.

**Authority:** *T.C.A. §4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-110; T.C.A. § 68-215-111; T.C.A. § 68-215-115; T.C.A. § 68-215-129.*

Paragraph (3) Annual Petroleum Underground Storage Tank Fees of rule 1200-1-15-.10 Fee Collection and Certificate Issuance Regulations is amended by deleting subparagraph (e) in its entirety and replacing it so that the subparagraph shall read as follows:

- (e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with rule 1200-1-15-.07 and replaced by a new underground storage tank installed at the same site in accordance with rule 1200-1-15-.02(1) or (6) no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of two hundred fifty dollars (\$250) per compartment shall be paid. If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

**Authority:** *T.C.A. § 4-5-201 et seq; T.C.A. § 68-215-101 et seq.; T.C.A. § 68-215-107; T.C.A. § 68-215-106; T.C.A. § 68-215-109.*

## RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 29th day of March, 2006. (03-38)

## RULEMAKING HEARINGS

### THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 WATER QUALITY CONTROL BOARD

There will be a series of hearings before the Water Quality Control Board to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-101 et seq. and the Tennessee Environmental Protection Fund 68-203-101 et seq. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the following times and locations:

DATE	SITE	HEARING LOCATION	TIME
May 30	Jackson	West Tennessee Experiment Station Agriculture Center, Room B 605 Airways Blvd.	7:00 p.m. CDT
June 1	Cookeville	Tennessee Technological University Pennebaker Hall, Room 128 or Prescott 1100 North Dixie Avenue	7:00 p.m. CDT
June 5	Murfreesboro	Auditorium Fleming Training Center 2022 Blanton Drive	7:00 p.m. CDT
June 6	Knoxville	Pellissippi State Technical Community College J L Goins Administration Building 10915 Hardin Valley Drive	7:00 p.m. EDT
June 7	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	7:00 p.m. EDT

The proposed rule revisions as well as the text of notice can be found at the TDEC website at [www.state.tn.us/environment/wpc/publications](http://www.state.tn.us/environment/wpc/publications). To otherwise obtain copies of the proposed revisions/text of the notice, please contact Glenda Stiles of the Division of Water Pollution Control by e-mail at [Glenda.Stiles@state.tn.us](mailto:Glenda.Stiles@state.tn.us) or by phone at 615-532-0637.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Oral and written comments will be accepted at the rulemaking hearings. In addition, written comments will be considered if received by close of business, June 26, 2006, by at the office of the technical secretary, Tennessee Water Quality Control Board, c/o Saya Qualls, Chief Engineer by e-mail at [Saya.Qualls@state.tn.us](mailto:Saya.Qualls@state.tn.us) or by regular mail at the following address:



## RULEMAKING HEARINGS

Saya Qualls  
6<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1534

### SUMMARY OF PROPOSED REVISIONS TO RULES

The Tennessee Water Quality Control Board (the board) has initiated the rulemaking process to make revisions to Tennessee's permitting and fee rules. Recently the Tennessee Water Quality Control Act (TWQCA) was amended to provide for citizen appeal of permit actions. The revisions to 1200-4-5 will incorporate that change in law, will provide minor clarifications and corrections to the rule. The revision to 1200-4-11 is a result of a petition before the board to specifically identify individual concentrated animal feeding permits as an annual maintenance fee category. In addition, a typographical error will also be corrected.

#### CHAPTER 1200-4-5

The rule revision will include several minor changes to correct a typographical error in the chapter title and internal references in subchapters .02 and 07. The chapter title currently reads, "Permit Effluent Limitations and Standards" instead of reading, "Permits, Effluent Limitations and Standards." The rule revision would make that correction. The rule will also be revised in subchapter .07, paragraph (2), subparagraph (n) to prohibit all overflows in order to stay consistent with federal rule and policy.

Subchapter .12 is being modified in order to implement the recent amendment to the TWQCA and will entitle aggrieved persons (in addition to permittees and applicants for permits) a review of permit actions by the Water Quality Control Board. In addition the rule revision will require that permittees, applicants for permits and aggrieved persons be specific in their appeal or request for review and that any such review would only include issues that were brought forth during the public comment period.

Several revisions are being made to subchapter .14 including a change in paragraph (6) that specifies that all CAFOs regardless of size will submit application information to both the Tennessee Department of Agriculture and the Department of Environment and Conservation. Paragraph (15) contains language that requires that CAFOs seeking permit coverage after December 31, 2006, have a nutrient management plan developed, approved and have all measures, structures, etc., in place to fully implement upon the date of permit coverage. Finally, a typographical error is being corrected in paragraph (16), subparagraph (d) part 4.

#### CHAPTER 1200-4-11

In addition to correcting a typographical error in Rule 1200-4-11-.02 (2), the same paragraph would be amended by inserting the following language as part 12 under subparagraph (b) and renumbering the remaining parts:

12. Concentrated animal feeding operations covered by an individual permit      \$250

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day, 2006. (03-41)

## RULEMAKING HEARINGS

### TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1<sup>st</sup> Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. C.S.T. on the 16<sup>th</sup> day May 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

### SUBSTANCE OF PROPOSED RULE

Subparagraph (h) of paragraph (7) of rule 1200-13-14-.05 Enrollee Cost Sharing is deleted in its entirety and subsequent subparagraphs relettered accordingly.

**Authority:** *T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 31st day of March, 2006. (03-42)

## RULEMAKING HEARINGS

### TENNESSEE COMMISSION OF INDIAN AFFAIRS - 0785

There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation acting on behalf of the Tennessee Commission of Indian Affairs (TCIA), to consider the adoption and promulgation of rules pursuant to Tennessee Code Annotated Section 4-34-103 and the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the first floor auditorium of the Tennessee Department of Transportation Administration Building located at 6601 Centennial Boulevard, Nashville, Tennessee at 10:00 AM CDT on Saturday May 20, 2006.

Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten days prior to May 20, 2006 (or the date such party intends to review such filings), to allow time to provide such aid or services. Contact the ADA Coordinator at 401 Church Street, 12<sup>th</sup> Floor, L & C Tower, Nashville, Tennessee 37243 or call (615) 532-0200 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of this Notice of Rulemaking Hearing, contact: Mr. Ed Harris, 20<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1535; telephone 615-532-0131.

### SUBSTANCE OF PROPOSED RULES

Rules 0785-1-.01 through .08 of Rule Chapter 0785-1 Recognition Criteria For Native American Indians expired by sunset action of the Legislature and the following new rules are replacing them to read as follows:

#### NEW RULES

#### TABLE OF CONTENTS

0785-1-.01	General
0785-1-.02	Recognition Criteria For Native American Indian Nations, Tribes or Bands
0785-1-.03	Recognition Criteria For Native American Indian Organizations
0785-1-.04	Recognition Criteria For Native American Indian Individuals In Tennessee
0785-1-.05	Procedures For Petitioning For Recognition
0785-1-.06	Changes In Membership Rolls
0785-1-.07	Appeals

#### **0785-1-.01      GENERAL**

##### (1) General

##### (a) Purpose

To establish criteria and procedures to provide for legal recognition by the state of Tennessee of Native American Indians residing in Tennessee.

##### (b) Use of Number and Gender

## RULEMAKING HEARINGS

As used in these Rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

### (c) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

### (2) Definitions

When used in Rules 0785-1-.01 through .08, the following terms have the meanings given below unless otherwise specified:

"Commission" means the Tennessee Commission of Indian Affairs.

"Disabled person" means any person determined to be in need of partial or full supervision, protection, and assistance by reason of mental illness, physical illness or injury, advanced age, developmental disability or other mental or physical incapacity.

"Enrollment" means being recognized as a Native American Indian by the state of Tennessee.

"Roll" means the official list of recognized Native American individuals in Tennessee.

"State" means the state of Tennessee.

**Authority:** T.C.A. §4-34-103.

## RULEMAKING HEARINGS

### **0785-1-.02      RECOGNITION CRITERIA FOR NATIVE AMERICAN INDIAN NATIONS, TRIBES OR BANDS**

- (1) The petitioning group has been identified on a substantially continuous basis as Native American Indians throughout the history of their race; and
- (2) A substantial portion of the petitioning group inhabits a particular geographic area or lives in a community viewed as Native American Indian and distinct from all other populations in the geographic area, and that its members are descendants of an Indian tribe which has historically inhabited the same geographic area; and
- (3) The petitioning group has maintained tribal political influence or other authority over its members, or is able to demonstrate their existence as a continuous, distinct cultural entity capable of self-regulation, throughout their history until the present; and
- (4) A copy of the group's present governing document is provided and/or a statement describing in full the membership criteria and the procedures through which the group governs its affairs and members; and
- (5) A list of all known current members of the group and a copy of any available list of former members, based on the tribe's own defined criteria, shall be submitted. The membership must consist of individuals who have established descendency from a tribe that existed historically; and
- (6) The membership of the group is composed principally of persons who are not members of any other North American Indian tribe.

**Authority:** T.C.A. §4-34-103.

### **0785-1-.03      RECOGNITION CRITERIA FOR NATIVE AMERICAN INDIAN ORGANIZATIONS**

- (1) The petitioning group shall have as its primary purpose the promotion of education, economic, or social advancement or self-sufficiency of Native American Indians, and as a secondary purpose the promotion and preservation of Native American Indian culture. The charter and by-laws of the organization must clearly document such purposes; and
- (2) The petitioning group shall be legally established, with appropriate charter, articles of incorporation, by-laws, and/or constitution, in accordance with state laws, and copies of the above-mentioned documents shall be provided; and
- (3) The petitioning group shall provide a statement describing membership criteria and a list of all known current members, including identification of Native American Indian members, based on the group's own defined criteria of ancestry recognition. A membership ratio must be maintained consisting of a majority of Native American Indians to non-Indian members; and
- (4) The petitioning group shall be controlled by a governing board and officers, the majority of which are Native American Indians.

**Authority:** T.C.A. §4-34-103.

## RULEMAKING HEARINGS

### **0785-1-.04      RECOGNITION CRITERIA FOR NATIVE AMERICAN INDIAN INDIVIDUALS IN TENNESSEE**

- (1) All applicants must have maintained a permanent residence in Tennessee for at least six (6) months prior to their date of application.
- (2) Individuals may be enrolled with the state by satisfying any of the following means of documentation:
  - (a) The applicant has a roll number or certificate of Indian blood from a federally-recognized tribe; or
  - (b) The applicant's birth certificate shows the applicant or applicant's parent(s) to be Native American Indian; or
  - (c) The applicant has a family tree, which shows a direct ancestor of the applicant to appear on a roll of a federally recognized Native American Indian tribe. All family trees will be subject to verification by professional genealogists at the applicant's expense; or
  - (d) The applicant signs an affidavit stating he/she is a Native American Indian. If the applicant has a living relative at least ten years older than the applicant, the relative must also sign the affidavit. In addition to the affidavit, the applicant shall provide at least one of the following:
    1. A family Bible or hymnal showing that the applicant and/or the applicant's direct ancestors were Native American Indian.
    2. Death records of the applicant's direct ancestor(s) showing the ancestor(s) to be Native American Indian.
    3. Records of direct ancestor(s) from the Indian Court of Claims.
    4. School, church or health records, or other compelling documentation which shows the applicant to be Native American Indian.

**Authority:** T.C.A. §4-34-103.

### **0785-1-.05      PROCEDURES FOR PETITIONING FOR RECOGNITION**

- (1) Applications for recognition are available on request from the Tennessee Commission of Indian Affairs.
- (2) Applications for minors and disabled persons may be filed by the parent, next of kin, recognized guardian, or other person responsible for the care of the minor or disabled person.
- (3) Complete applications and supporting documentation with a \$20.00 processing fee per group or individual are to be sent to:

Secretary/Treasurer  
Tennessee Commission of Indian Affairs  
1541 Welsh Road  
Memphis, Tennessee 38117-6731

## RULEMAKING HEARINGS

- (4) The Review Committee of the Tennessee Commission of Indian Affairs shall review all applications and supporting documentation.
- (5) If the application and required documentation are complete, the Committee will present the information to the Commission for the Commission to review. The applicant(s) will be notified in writing of the Commission meeting when the application will be reviewed.
- (6) The Commission will either approve or deny the application. The Commission may request additional information from the applicant if necessary.
- (7) The Commission will notify each applicant in writing of the Commission's decision.

**Authority:** T.C.A. §4-34-103.

### 0785-1-.06 CHANGES IN MEMBERSHIP ROLLS

- (1) Nations, tribes, or bands recognized pursuant to the rules herein contained shall notify the Tennessee Commission of Indian Affairs of any changes in enrollment criteria and subsequent additions or deletions of members.
- (2) Organizations recognized pursuant to the rules herein contained shall submit updated membership rolls on a biennial basis for renewal of recognition certification.
- (3) Upon receipt of a death certificate or other evidence of death acceptable to the Commission, the name of the deceased person shall be removed from the roll.
- (4) Any recognized individual may terminate his or her enrollment by submitting written notice to the Chairperson of the Commission.

**Authority:** T.C.A. §4-34-103.

### 0785-1-.07 APPEALS

- (1) Any group or individual whose application for recognition has been denied may file an appeal to the Commission.
- (2) The appeal shall be made in writing and shall be received by the Commission with thirty (30) days of the date of the Commission meeting when the application was denied.

**Authority:** T.C.A. §4-34-103.

The Commission prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office  
Suite E-645, Perimeter Park  
2510 Mount. Moriah Road  
Memphis, TN 38115-1520  
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Field Office  
1221 South Willow Avenue  
Cookeville, TN 38506  
(931) 432-4015/ 1-888-891-8332

## RULEMAKING HEARINGS

Jackson Environmental Field Office  
362 Carriage House Drive  
Jackson, TN 38305-2222  
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office  
Suite 550- State Office Building  
540 McCallie Avenue  
Chattanooga, TN 37402-2013  
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office  
2484 Park Plus Drive  
Columbia, TN 38401  
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office  
Suite 220- State Plaza  
2700 Middlebrook Pike  
Knoxville, TN 37921-5602  
(865) 594-6035/ 1-888-891-8332

Nashville Environmental Field Office  
711 R. S. Gass Blvd.  
Nashville, TN 37243-1550  
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office  
2305 Silverdale Road  
Johnson City, TN 37601-2162  
(423) 854-5400/1-888-891-8332

Additional review copies are available at the following library locations:

McIver's Grant Public Library  
204 North Mill Street  
Dyersburg, TN 38024-4631  
(731) 285-5032

W. G. Rhea Public Library  
400 West Washington Street  
Paris, TN 38242-0456  
(731) 642-1702

Hardin County Library  
1013 Main Street  
Savannah, TN 38372-1903  
(731) 925-4314

Clarksville-Montgomery County Public Library  
350 Pageant Lane, Suite 501  
Clarksville, TN 37040-0005  
(931) 648-8826

Coffee County-Manchester Public Library  
1005 Hillsboro Highway  
Manchester, TN 37355-2099  
(931) 723-5143

Art Circle Public Library  
154 East First Street  
Crossville, TN 38555-4696  
(931) 484-6790

E. G. Fisher Public Library  
1289 Ingleside Ave.  
Athens, TN 37371-1812  
(423) 745-7782

Kingsport Public Library & Archives  
400 Broad Street  
Kingsport, TN 37660-4292  
(423) 229-9489

The "DRAFT" rules may also be accessed for review using:

[www.tdec.net/tcia](http://www.tdec.net/tcia)



## RULEMAKING HEARINGS

Office hours for the TDEC offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to Office of General Counsel; Tennessee Department of Environment and Conservation; Attention: Mr. Ed Harris; 20<sup>th</sup> Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0131 or FAX 615-532-0145. However, such written comments must be received by 4:30 PM CDT, May 31, 2006 in order to assure consideration. For further information, contact Mr. Ed Harris at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of March, 2006. (03-37)

## RULEMAKING HEARINGS

### BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS - 0120 DIVISION OF HEALTH RELATED BOARDS

There will be a hearing before the Tennessee Board of Examiners for Nursing Home Administrators to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-16-103. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Magnolia Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CDT) on the 19th day of May, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, Tennessee 37247-1010, (615) 532-4397.

### SUBSTANCE OF PROPOSED RULES

#### AMENDMENTS

Rule 1020-1-.03 Board Officers, Records, Meetings, Consultants, Change of Address and/or Name, Declaratory Orders, and Screening Panels, is amended by deleting paragraph (5) in its entirety and substituting instead the following language, so that as amended, the new paragraph (5) shall read:

- (5) The Board members or the Board's consultant/designee are individually vested with the authority to do the following acts:
  - (a) Conduct Nursing Home Administrator reviews as provided in Rule 1020-1-.14;
  - (b) Review and make determinations on applications for initial licensure, renewal of licensure, and reactivation and reinstatement of licensure subject to the rules governing those respective applications;
  - (c) Decide whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division; and
  - (d) Decide whether and under what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently considered by the full Board and either adopted or rejected.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-1-132, 63-1-142, 63-16-103, 63-16-107, and 63-16-108.

Rule 1020-1-.10, Examinations, is amended by part (1) (b) 3. in its entirety and substituting instead the following language, and is further amended by adding the following language as parts (1) (b) 4. and (1) (b) 5., so that as amended, the new parts (1) (b) 3., (1) (b) 4., and (1) (b) 5. shall read:

## RULEMAKING HEARINGS

- (1) (b) 3. Applicants who fail to successfully complete the examination on the initial attempt may apply to retake it by complying with the requirements stated in subparagraph (1) (a) of this rule.
- (1) (b) 4. Applicants who fail twice to successfully complete the examination shall do the following before each subsequent retaking:
  - (i) Complete an additional A.I.T. program which emphasizes training in the deficient areas and is at least three (3) months in length; or
  - (ii) Submit to the Board for approval an education and training program as an alternative to the additional A.I.T. program. Any alternative education and training program must be approved by the Board prior to the applicant beginning such program, and must be successfully completed before retaking the examination.
- (1) (b) 5. Applicants who fail twice to successfully complete the examination may, in the Board's discretion, be required to furnish a written opinion of his/her reasons for the failure or may be required to appear before the Board to deliver an oral opinion. Failure of an applicant to provide the written or oral opinion shall cause the licensure application to be closed.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-105, and 63-16-106.

Rule 1020-1-.15, Licensure Discipline, Civil Penalties, Informal Settlements, Assessment of Costs, and Subpoenas, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting paragraph (7) in its entirety and substituting instead the following language, so that as amended, the new catchline and the new paragraph (7) shall read:

### **1020-1-.15 LICENSURE DISCIPLINE, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SUBPOENAS.**

- (7) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

**Authority:** T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, and 63-16-108.

The notice of rulemaking set out herein was properly filed in the Department of State on the 14th day of March, 2006. (03-10)

## RULEMAKING HEARINGS

### TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Region II Conference Room of the Tennessee Wildlife Resources Agency, Ray Bell Region II Building, 5105 Edmondson Pike, Nashville, Tennessee, at 9:00 a.m., local time, on the 25th day of May, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204, telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

### SUBSTANCE OF PROPOSED RULES

#### CHAPTER 1660-1-8 RULES AND REGULATIONS OF HUNTS

#### AMENDMENT

Rule 1660-1-8-.05 (4) Permit Applications and Drawings, is amended by deleting paragraph (4) in its entirety and inserting a new paragraph (4) to read as follows:

- (4) Waterfowl hunt drawing and allocation procedure on Bogota Wildlife Management Area (except Pool 1).
  - (a) Each individual desiring to participate in a quota waterfowl hunt must make application at times specified and as per instructions supplied by the Tennessee Wildlife Resources Agency.
  - (b) Applicants may apply only once per year. If more than one application is received per hunter, that individual will be rejected, his fee forfeited, and will be subject to prosecution.
  - (c) Youths under sixteen (16) years of age, on or before the day of the hunt, may apply, however they must apply in a party of at least one adult eighteen (21) years of age or older.
  - (d) All information requested at the time of application must be completed provided. Failure to specify all information will result in the application being rejected.
  - (e) The number of applicants comprising a party may not exceed four (4) members.
  - (f) Each application must be accompanied by a \$10.00 non-refundable handling fee for each applicant, except Sportsman License holders and persons possessing a type 167 permit.

## RULEMAKING HEARINGS

- (g) Successful applicants must also possess appropriate licenses and permits in order to participate in the hunts.
- (h) Priority drawings and procedures for qualifying with priority status will be established as indicated by TWRA.
- (i) A computer drawing will be held to determine successful applicants. Any vacancies will not be filled for that hunt date.

**Authority:** T.C.A. §§70-1-206, 70-4-107, and 70-5-101

### CHAPTER 1660-1-11 RULES AND REGULATIONS GOVERNING SHOOTING

#### AMENDMENTS

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by deleting paragraph (2), subparagraph (a) in its entirety and replacing it with the following language:

- (a) Any person desiring to operate a Private Wildlife Preserve as herein defined shall make application to the Wildlife Resources Agency for a permit to do so. The Wildlife Resources Agency will cause an inspection to be made of the wildlife preserve and if same shall be found to be meeting the qualifications of these rules and regulations, a permit will be issued. The permit will grant the privilege to the owner or operator of said Private Wildlife Preserve to release captive wildlife approved by the Wildlife Resources Agency. All Class III species and fowl authorized under this permit must come from sources approved by the Tennessee Department of Agriculture. The species to be released will be indicated on the permit.

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by deleting paragraph (3), subparagraph (c) in its entirety and replacing it with the following language:

- (c) The following species of Cervidae may only be held or harvested by wildlife preserves if such animals are obtained from a herd outside of the state that has been certified as Chronic Wasting Disease free for the past 5 years, and are authorized for import by the Tennessee Department of Agriculture.

1. Elk/Red Deer (*Cervus elaphus*)
2. Black-tailed Deer/Mule Deer (*Odocoileus hemionus*)
3. Moose (*Alces alces*)
4. Other Class III wildlife species shown to be susceptible to CWD

Wildlife preserves may also hold and harvest the above mentioned species if these animals are obtained within the state of Tennessee from a herd in a CWD surveillance program continuously for the past 5 years or prior to July 1, 2006, whichever time period is shorter, as recognized by Tennessee Department of Agriculture. Animals so obtained shall not have been exposed to non-surveillance animals during the surveillance period. Also, these

## RULEMAKING HEARINGS

animals must retain the identification marker(s) placed on the animals while in the surveillance programs.

The Tennessee Department of Agriculture, USDA or TWRA must be notified within 24 hours of the harvest or death of the above mentioned Cervidae. The head and neck of these animals must be retained and refrigerated by the preserve operator for at least 72 hours in order to allow for any necessary testing by the above agencies.

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by deleting paragraph (4), sub-paragraph (a) in its entirety and replacing it with the following language:

- (a) The land area for which a permit will be issued must contain a minimum of twenty (20) acres and this land must be in one continuous tract. No artificial structures or devices can be used to create a hunting or training area less than twenty (20) acres. On wildlife preserves that require fencing, the fencing must be done in a continuous manner along the boundaries in such a fashion to prevent the escape of animals being held by the preserve. On wildlife preserves where big game species are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and half (12.5) gauge wire and such fence shall be a minimum of eight (8) feet in height. On wildlife preserves where only swine, goats or sheep are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and half (12.5) gauge wire, and such fence shall be a minimum of four (4) feet in height. On wildlife preserves where foxes and raccoons are hunted, the boundaries must be fenced with woven wire fence of a minimum twelve and half (12.5) gauge wire with a maximum of four (4) inch spacing, anchored at the base and such fence shall be a minimum of seventy-two (72) inches in height. On wildlife preserves where rabbits are hunted, the boundaries must be fenced with wire fence with a maximum of two (2) inch spacing anchored at the base and such fence shall be a minimum of thirty-six (36) inches in height. Wildlife preserve boundaries which are fenced with a minimum of eight (8) foot fencing, must have any entrance to such preserve posted with signs identifying it as a wildlife preserve. Wildlife preserve boundaries that are fenced with less than eight (8) foot fencing or no fencing at all, must have its boundaries posted every fifty (50) yards with signs identifying it as a wildlife preserve. All signs used to identify a wildlife preserve must be at least 8-1/2 inches by 11 inches and have the words "Wildlife Preserve" printed on the sign in letters not less than 1 inch in height on contrasting background.

Rule 1660-1-11-.02 Operation of Private Wildlife Preserve is amended by deleting paragraph (5) in its entirety and replacing it with the following language:

### (5) Records

- (a) Permittees will maintain records on forms provided by TWRA showing the number and species of wildlife purchased, the name and address of the source of supply, number and species propagated, the number and species released, and the number and species taken. Also, permittees will maintain records on forms provided by TWRA, listing the name and address of each hunt participant, the date of the hunt and their hunt record. These records are to be kept for a minimum of three (3) years and be available for inspection at the address listed on the permit for the Wildlife Preserve by agents of the Tennessee Wildlife Resources agency upon request.
- (b) Operator and/or owners of a Wildlife Preserve must have at the address indicated on their preserve permit receipts for all animals held, released, hunted, and/or harvested on such preserve. These receipts must have the name and address of the supplier and be signed

## RULEMAKING HEARINGS

by such supplier. The receipts are to list species, numbers, sex, and all identifiers for animal(s) listed on such receipt. These receipts are to be provided to agents of TWRA or the Department of Agriculture upon request.

**Authority:** T.C.A. §§70-1-206 and §70-4-413

### CHAPTER 1660-1-18 RULES AND REGULATIONS LIVE WILDLIFE

#### AMENDMENTS

Rule 1660-1-18-.05 Special Provisions is amended by deleting paragraph (1) in its entirety and replacing it with the following language:

- (1) All Nature Centers, Rehabilitation Centers, Educational Exhibits, and Zoos meeting provisions which exempt them from the fees for necessary permits must complete an application and provide requested information. No Class III Wildlife may be possessed by a Nature Center, Rehabilitation Center or Educational Exhibits, nor may these permittees hold any other Captive Wildlife Permits issued by the Tennessee Wildlife Resources Agency, unless authorized by the Executive Director of the Tennessee Wildlife Resources Agency. This prohibition does not apply to facilities deemed as a bonafide zoo.

Rule 1660-1-18-.05 Special Provisions is amended by deleting paragraph (4), subparagraph (b), part 2 in its entirety and replacing it with the following language:

2. Documentation showing one of the following qualifications has been met in order to be eligible for a Rehabilitation and/or Education exhibit permit:
  - (i) Two hundred hours of experience in rehabilitation or handling of the species in which the person wishes to be permitted; or
  - (ii) One year of full time employment as a Veterinary Technician; or
  - (iii) Possess a Doctorate of Veterinary Medicine and be Board Certified in the State of Tennessee; or
  - (iv) Possess a valid permit for Wildlife Rehabilitation or Education from another state for the species in which the person wishes to be permitted. Also, individuals in this category must have been in good standing in the state which the permit was held.

Rule 1660-1-18-.05 Special Provisions is amended by deleting paragraph (4), subparagraph (p), parts 2 and 3 in their entirety and replacing them with the following language:

2. Animals authorized by the Executive Director of Tennessee Wildlife Resources Agency for use under the authority of a valid Educational Exhibit Permit issued by the Tennessee Wildlife Resources Agency.

**Authority:** T.C.A. §§70-1-206, 70-4-401, 70-4-404 and 70-4-405

## RULEMAKING HEARINGS

### CHAPTER 1660-1-28 RULES AND REGULATIONS GOVERNING LICENSES, PERMITS AND FEES

#### AMENDMENTS

Rule 1660-1-28-.01 Basic Resident Licenses and Fees is amended by inserting the following language at the end of paragraph (1):

No resident of Tennessee shall be required to possess any of the licenses listed above when hunting on the 4<sup>th</sup> Saturday in August, known as free hunting day. Hunting is limited to those species on which there is an open season as proclaimed by the Tennessee Wildlife Resources Commission.

Rule 1660-1-28-.03 Wildlife Management Area and Designated Area Permits and Fees is amended by inserting the following language at the end of paragraph (1):

No resident of Tennessee shall be required to possess any of the permits listed above when hunting on the 4<sup>th</sup> Saturday in August, known as free hunting day. Hunting is limited to those species on which there is an open season as proclaimed by the Tennessee Wildlife Resources Commission.

**Authority:** T.C.A. §70-1-206

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of March, 2006. (03-33)





### **CERTIFICATE OF APPROVAL**

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning March 1, 2006 and ending March 31, 2006.

A handwritten signature in black ink, reading 'Riley C. Darnell'.

**RILEY C. DARNELL**  
**Secretary of State**